

**176.** No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distant from the Court-house.

**177.** If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

**178.** Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

#### CHAPTER XV.

##### OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

**179.** On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

*Explanation.*—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

**180.** The other party shall then state his case and produce his evidence (if any).

The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the

evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

**181.** The evidence of the witnesses in attendance shall be taken orally in open Court in the presence, and under the personal direction and superintendence, of the Judge.

**182.** In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

**183.** If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

**184.** In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

**185.** Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

**186.** The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

**187.** If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

**188.** The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

#### CHAPTER XVI.

##### OF AFFIDAVITS.

194. Any Court of first instance and any appellate Court may at any time order for sufficient reason that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

195. Upon any application evidence may be given by affidavit, but the Court may at the instance of either party order the attendance for cross-examination of the declarant.

Such attendance shall be in Court unless the declarant is exempted under this Code from personal appearance in court, or the Court otherwise directs.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

197. In the case of any affidavit under this Code—  
(a) any Court or Magistrate, or

(b) any officer whom a High Court may appoint in this behalf, or

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf, may administer the oath of the declarant.

#### CHAPTER XVII.

##### OF JUDGMENT AND DECREE.

198. The Court, after the evidence has been duly taken and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

199. A Judge may pronounce a judgment written by his predecessor but not pronounced.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so

require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

**202.** The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

**203.** The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

**204.** In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

**205.** The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

**206.** The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

**207.** When the subject-matter of the suit is immovable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

**208.** When the suit is for moveable property, if the decree be for the delivery of such property, it

shall also state the amount of money to be paid as an alternative if delivery cannot be had.

**209.** When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

**210.** In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest.

And after the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit:

Save as provided in this section and section 208, no decree shall be altered at the request of parties.

**211.** When the suit is for the recovery of possession of immovable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

*Explanation.*—'Mesne profits' of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits.

**212.** When the suit is for the recovery of possession of immovable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of mesne profits, and dispose of the same on further orders.

**213.** When the suit is for an account of any property and for its due administration under the de-



decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Applications under section 265 of the Indian Contract Act, 1872, shall be deemed to be suits within the meaning of this section.

214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

217. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

## CHAPTER XVIII.

### OF COSTS.

218. When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

## CHAPTER XIX.

### OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

223. A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (a), (b) and (c) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another Court.

224. The Court sending a decree for execution under section 223 shall send

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(c) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

229. A decree of any Court established by the authority of the Governor General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

#### B.—Of Application for Execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of

twelve years from any of the following dates (namely)—

(a) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(b) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

**231.** If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

**232.** If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided as follows:—

(a) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(b) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

**233.** Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

**234.** If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

**235.** The application for the execution of a decree shall be in writing verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely)—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and what previous applications have been made for execution of the decree and with what result;
- (g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;
- (h) the amount of costs, if any, awarded;
- (i) the name of the person against whom the enforcement of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

**236.** Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

**237.** Whenever an application is made for the attachment of any immovable property belonging to the judgment-debtor, it shall contain at the foot a de-



scription of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

\* Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

**238.** If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

#### C.—Of staying Execution.

**239.** The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shewn, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

**240.** Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

**241.** No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

**242.** Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

**243.** If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court

may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

#### D.—Questions for Court executing Decree.

**244.** The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely) —

(a) questions regarding the amount of any mesne profits as to which the decree has directed inquiry;

(b) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree;

(c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

#### E.—Of the Mode of executing Decrees.

**245.** The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

**246.** If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

*Explanation I.*—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

*Explanation II.*—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

*Explanation III.*—This section does not apply unless

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

the sums due under the decrees are definite.

#### Illustrations.

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

248. The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against

the same person the Court has ordered execution to issue against him.

*Explanation.*—In this section the phrase "the Court" means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

249. If the person to whom notice is issued under the last preceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decrees.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property:

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.



**254.** Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

**255.** If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

**256.** When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Power to direct immediate execution of decrees for money not exceeding Rs. 1,000.

**257.** All money payable under a decree shall be paid as follows (namely)—

- (a) into the Court whose duty it is to execute the decree; or
- (b) out of Court to the decree-holder; or
- (c) otherwise as the Court which made the decree directs.

**257A.** Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

**258.** If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257 A, the decree holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

**259.** If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

**260.** When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for the performance of or abstinence from any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

**261.** If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

**262.** The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section may be in the following form: "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

**263.** If the decree be for the delivery of any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, and; if need be, by removing any person bound by the decree who refuses to vacate the property.

**264.** If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order

delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

**265.** If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

#### F.—Of Attachment of Property.

**266.** The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory-notes, Government-securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

- (a) the necessary wearing apparel of the judgment-debtor, his wife and children;
- (b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court be necessary to enable him to earn his livelihood as such;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (d) books of account;
- (e) mere rights to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;
- (h) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees per mensem, and one moiety of the salary of any such officer or servant when his salary exceeds that amount;

- (g) the pay and allowances of persons to whom the Native Articles of War apply;
- (h) the wages of labourers and domestic servants;
- (i) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (j) a right to future maintenance.

*Explanation.*—The particulars mentioned in clauses (g), (h), (i) and (j) are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed

(a) to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent, or

(b) to affect the Army Act, 1881, or any similar law for the time being in force.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is issued.

268. In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public Company or Corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

The Local Government may from time to time make rules for the maintenance of attached live-stock, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

270. If the property be a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to the further orders of the Court.

271. No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

Provided that, if the room be in the actual occupancy of a woman, who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withhold



draw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

**272.** If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Provided that, if such property is deposited in, or is in the custody of, a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

**273.** If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(a) the Court which passed the decree sought to be executed cancels the notice, or

(b) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

**274.** If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the Court-house.

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

**275.** If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

**276.** When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

**277.** If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

**278.** If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

**279.** The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

**280.** If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

**281.** If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

**282.** If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

**283.** The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

**284.** Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

**285.** Where property not in the custody of any Court has been attached in execution of decrees of more than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court

of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

#### G.—Of Sale and Delivery of Property.

##### (a) General Rules.

**286.** Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

**287.** When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

- (a) the property to be sold;
- (b) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;
- (c) any incumbrance to which the property is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

The High Court shall, as soon as may be after Rules to be made by this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may from time to time alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

**288.** No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

**289.** The proclamation shall be made, in manner prescribed by section 274, on the spot where the property

is attached, and a copy thereof shall then be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

**290.** Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale.

**291.** The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment: Provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it.

Stoppage of sale on tender of debt and costs, or on proof of payment. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

**292.** No officer having any duty to perform in connection with any sale under this chapter shall either directly or indirectly bid for, acquire or attempt to acquire, any interest in any property sold at such sale.

**293.** The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

**294.** No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

**295.** Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided as follows:—

(a) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(b) when any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

(c) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;  
secondly, in discharging the interest and principal-money due on the incumbrance;  
thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.



Nothing in this section affects any right of the Government.

(b) *Rules as to Moveable Property.*

**296.** If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

**297.** In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

**298.** No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

**299.** When the property sold is a negotiable instrument or other moveable property of which actual seizure has been made, the property shall be delivered to the purchaser.

**300.** When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

**301.** When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

**302.** If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share or may execute such other document as may be necessary.

The endorsement or execution shall be in the following form or to the like effect:—“A. B., by C. D., Judge of the Court of (or as the case may be); in a suit by E. F. against A. B.”

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

**303.** In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(c) *Rules as to Immoveable Property.*

**304.** Sales of immoveable property in execution of a decree may be ordered by any Court other than a Court of Small Causes.

**305.** When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale shall be paid into court and not to the judgment-debtor.

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

**306.** On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit,

the property shall forthwith be put up again and sold.

**307.** The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

**308.** In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

**309.** Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinafter prescribed for the sale.

**310.** When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

**311.** The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

**312.** If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

**313.** The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make

such order as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

**314.** No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

**315.** When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

**316.** When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date.

**317.** No suit shall be maintained against the certified purchaser on the ground that the purchase was made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

**318.** When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

**319.** When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

**320.** The Local Government may, with the sanction of the Governor General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immovable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immovable property, shall be transferred to the Collector, and rescind or modify any such declaration.

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court.

**321.** When the execution of a decree has been so transferred, the Collector may—

(a) proceed as the Court would proceed under section 305; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary.

**322.** When the execution of a decree, not being a decree ordering the sale of immovable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immovable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immovable property, may proceed as hereinafter provided.

**322A.** In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(a) every person holding a decree for money against the judgment-debtor capable of execution

by sale of his immovable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(b) every person having any claim on the said property, to submit to the Collector a statement of such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

**322B.** Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immovable property, and may from time to time adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immovable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The Collector shall then draw up a statement as above provided in accordance with such decision.

**322C.** The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immovable property so far as they are known to the Collector or appear in the records of his office, and forward



such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

**322D.** The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

**323.** Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(a) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(b) by mortgaging the whole or any part of such property; or

(c) by selling part of such property; or

(d) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(e) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to

such rules consistent with this Act as may from time to time be made in this behalf by the Chief Controlling Revenue-authority.

**324.** If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

**324A.** The Collector shall from time to time render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Such balance shall be applied by the Court as follows:—

firstly, in providing for the maintenance of such members of the judgment-debtors's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

**325.** When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot ;
- (b) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment ;
- (c) buy in the property offered for sale, and resell the same by public auction or private contract, as he thinks fit.

**325A.** So long as the Collector can exercise or perform in respect of the judgment-debtor's immovable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any civil Court issue any process against such property or part in execution of a decree for money.

During the same period no civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

**325B.** When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall from time to time be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

**325C.** In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a civil Court to compel the attendance of parties and witnesses and the production of documents.

**326.** When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is

objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.

**327.** The Local Government may from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as in the opinion of the Local Government to make it impossible to fix their value :

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may from time to time, with the sanction of the Governor General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

#### H.—Of Resistance to Execution.

**328.** If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

**329.** If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

**330.** If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may

extend to thirty days, and direct that the decree-holder be put into possession of the property.

**331.** If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant ;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

**332.** If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

**333.** Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

**334.** If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

**335.** If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

#### I.—Of Arrest and Imprisonment.

**336.** A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned :

Provided as follows :—

(a) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found : provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest :

(b) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer



arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest :

But if he fails so to apply, the Court may either direct the security to be realised or commit him to jail in execution of the decree.

In the case of a surety such security may be realised in manner provided by section 258.

**337.** Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid.

**338.** The Local Government may from time to time prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

**339.** No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

**340.** Sums disbursed by the decree-holder for Subsistence-money to the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

**341.** The judgment-debtor shall be discharged from jail,

(a) on the amount mentioned in the warrant of committal being paid to the officer in charge of the jail; or

(b) on the decree being otherwise fully satisfied; or

(c) at the request of the person on whose application he has been imprisoned; or

(d) on such person omitting to pay the allowance as hereinbefore directed; or

(e) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(f) when the term of his imprisonment, as limited by section 342, is fulfilled :

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

**342.** No person shall be imprisoned in execution of a decree for a longer period than six months;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

**343.** The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

## CHAPTER XX.

### OF INSOLVENT JUDGMENT-DEBTORS.

**344.** Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of

attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

**345.** The application, when made by the judgment-debtor, shall set forth—

(a) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(b) the amount, kind and particulars of his property, and the value of any such property not consisting of money;

(c) the place or places in which such property is to be found;

(d) his willingness to put it at the disposal of the Court;

(e) the amount and particulars of all pecuniary claims against him; and

(f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

**346.** The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

**347.** The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in court and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application;

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under

this section if satisfied that he is unable to make them.

**348.** The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

**349.** Where the judgment-debtor is under arrest, the Court may, pending the hearing under section 351, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

**350.** On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

**351.** If the Court is satisfied—

(a) that the statements in the application are substantially true;

(b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property;

(d) that he has not committed any other act of bad faith regarding the matter of the application, the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent,

If the Court is not so satisfied, it shall make an order rejecting the application.

**352.** The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and

particulars of their respective pecuniary claims against him; and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

**353.** Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

**354.** Every order under section 351 shall be published in the local official Gazette and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

**355.** The Receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid;

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

**356.** The Receiver shall proceed under the direction of the Court—

- (a) to convert the property into money:
- (b) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government:

(c) to pay the said decree-holder's costs:

(d) to discharge according to their respective priorities all debts secured by mortgage of the insolvent's property:

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference,

and such Receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative:

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the monies already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

**357.** An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266 and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

**358.** If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall, declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

**359.** Whenever, at the hearing under section 350, it is proved that the applicant has

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

**360.** The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma.

## PART II.

### OF INCIDENTAL PROCEEDINGS.

#### CHAPTER XXI.

##### OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

**361.** The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

##### Illustrations.

(a) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the right to sue survives to C, and the suit does not abate.

(b) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(d) A, a member of a Hindû joint family under the Mitâksharâ law, institutes a suit for partition of the family-property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

**362.** If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

**363.** If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

**364.** If within the time limited by law no application be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

**365.** In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

**366.** If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal re-



preseptative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

*Explanation.*—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

**367.** If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the

*Procedure in case of dispute as to representative of deceased plaintiff.* fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

**368.** If there be more defendants than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

*Procedure in case of death of one of several defendants.* and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit ;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit :

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

**369.** The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may,

with the permission of the Court, be executed against the husband also ; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

**370.** The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 851 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

*When plaintiff's bankruptcy or insolvency bars suit.* If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

**371.** When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

*Effect of abatement or dismissal.* But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal ; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

**372.** In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come either in addition to or in substitution for the person from whom it has passed, as the case may require.

## CHAPTER XXII.

### OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

**373.** If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

*Power to allow plaintiff to withdraw with liberty to bring fresh suit.*

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

**374.** In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

**375.** If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction.

#### CHAPTER XXIII.

##### OF PAYMENT INTO COURT.

**376.** The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

**377.** Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

**378.** No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

**379.** If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall

pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

##### Illustrations.

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100 and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

#### CHAPTER XXIV.

##### OF REQUIRING SECURITY FOR COSTS.

**380.** If, at the institution or at any subsequent stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

**381.** In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

**382.** Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

#### CHAPTER XXV.

##### OF COMMISSIONS.

##### A.—Commissions to examine Witnesses.

**383.** Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of persons resident with-

in the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are from sickness or infirmity unable to attend it.

**384.** Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

**385.** The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute the same.

Persons for whose examination commission may issue.

**386.** Any Court may in any suit issue a commission for the examination of—

(a) any person resident beyond the local limits of its jurisdiction;

(b) persons who are about to leave such limits before the date on which they are required to be examined in Court; and

(c) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint.

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court.

**387.** When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission.

**388.** Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

**389.** After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit.

**390.** Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

**391.** The provisions herebefore contained as to the execution and return of commissions shall apply to commissions issued by

(a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with Her Majesty.

#### B.—Commissions for local investigations.

**392.** In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court:

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

**393.** The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court.

The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

*C.—Commissions to examine Accounts.*

**394.** In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

**395.** The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

*D.—Commission to make Partition.*

**396.** In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission to such persons as it thinks fit to make a partition according to such rights.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

*E.—General Provisions.*

**397.** Before issuing any commission under this Chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into court by the

party at whose instance or for whose benefit the commission is issued.

**398.** Any Commissioner appointed under this Chapter may, unless otherwise directed by the order of appointment,

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

**399.** The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

**400.** Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

If the parties do not so appear the Commissioner may proceed *ex parte*.

**PART III.****OF SUITS IN PARTICULAR CASES.****CHAPTER XXVI.****SUITS BY PAUPERS.**

**401.** Subject to the following rules, any suit may be brought by a pauper.

*Explanation.*—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

**402.** No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault.



**403.** The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

**404.** Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

**405.** If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

**406.** If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

**407.** If it appear to the Court

- (a) that the applicant is not a pauper, or
  - (b) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or
  - (c) that his allegations do not show a right to sue in such Court, or
  - (d) that he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter,
- the Court shall reject the application.

**408.** If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing

any evidence which may be adduced in disproof thereof.

**409.** On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

**410.** If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V, except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

**411.** If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

**412.** If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made under section 32 co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

**413.** An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit ;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper, or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

#### CHAPTER XXVII.

##### SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State in Council.

417. Persons being *ex officio* or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

419. The Government Pleader in any court shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such court.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State

in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

423. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel ;

and the Court upon such application may extend the time for so long as appears to be requisite.

424. No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff ; and the plaint must contain a statement that such notice has been so delivered or left.

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

**428.** In a suit against a public officer in respect of such act as aforesaid the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

**429.** When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

### CHAPTER XXVIII.

#### SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

**430.** Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

**431.** A foreign State may sue in the Courts of British India, provided that—

(a) it has been recognized by Her Majesty or the Governor General in Council, and

(b) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor General in Council.

**432.** Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be

deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

**433.** Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of Government certified by the signature of one of its Secretaries (but not without such consent) be sued in any competent Court not subordinate to a District Court;

Such consent shall not be given unless—

(a) the Prince, Chief, ambassador or envoy has instituted a suit in such Court against the person desiring to sue him; or

(b) the Prince, Chief, ambassador or envoy by himself or another trades within the local limits of the jurisdiction of such Court; or

(c) the subject-matter of the suit is immovable property situate within the said local limits and in the possession of the Prince, Chief, ambassador or envoy.

No such Prince, Chief, ambassador or envoy shall be arrested under this Code; and no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy unless with consent of Government certified as aforesaid.

**434.** The Governor General in Council may from time to time, by notification in the *Gazette of India*,

(a) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor General in Council, may be executed in British India as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

### CHAPTER XXIX.

#### SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

**435.** In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaintiff may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

**436.** When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary or other principal officer of the Corporation or Company;

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

### CHAPTER XXX.

#### SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

**437.** In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

**438.** When there are several executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

**439.** Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

### CHAPTER XXXI.

#### SUITS BY AND AGAINST MINORS AND PERSONS OF UNBOUND MIND.

**440.** Every suit by a minor shall be instituted in his name by an adult person, who in such suit shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

**441.** Every application to the Court on behalf of a minor (other than an application under section 440) shall be made by his next friend, or his guardian for the suit.

**442.** If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

*Plaint filed without next friend to be taken off file.*

*Costs.*

**443.** Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

**444.** Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

*Costs.*

**445.** Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

**446.** If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor, as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

**447.** Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

*Retirement of next friend.*

*Application for appointment of new next friend.*



**448.** On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

**449.** If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

**450.** A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

**451.** If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such cases be corrected so as to read thenceforth thus:

"A. B., late a minor, by C. D., his next friend, but now of full age."

**452.** If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

**453.** Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

**454.** A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

**455.** If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable

or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

**456.** An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian: Provided that he has no interest adverse to that of the minor.

**457.** A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed.

**458.** If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

**459.** If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

**460.** When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

**461.** No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

**462.** No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

**463.** The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so under Act No. XXXV of 1858, or under any other law for the time being in force.

**464.** Nothing in sections 442 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards or by the Civil Court under any local law.

## CHAPTER XXXII.

### SUITS BY AND AGAINST MILITARY MEN.

**465.** When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

*Explanation.*—In this chapter the expression 'commanding officer' means the officer in actual command for the time being of any regiment, corps, detachment or depot to which the officer or soldier belongs.

**466.** Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could

do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

**467.** Processes served upon any person authorized by an officer or a soldier, as in section 466, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

**468.** When an officer or a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

**469.** If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station or military bazar, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

## CHAPTER XXXIII.

### INTERPLEADER.

**470.** When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

**471.** In every suit of interpleader the plaintiff must, in addition to the other statements necessary for complaints, state—

whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

**489.** Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

**490.** Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

*C.—Compensation for improper Arrests or Attachments.*

**491.** If in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment:

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

**CHAPTER XXXV.**

**OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.**

*A.—Temporary Injunctions.*

**492.** If in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or give such other

order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

**493.** In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance, if any, to the defendant.

**494.** The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

**495.** An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

**496.** Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

**497.** If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it

deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction:

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

#### B.—Interlocutory Orders.

**498.** The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay.

**499.** The Court may, on the application of any party to a suit, and on such terms as it thinks fit, (a) make an order for the detention, preservation or inspection of any property being the subject of such suit;

(b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and

(c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

**500.** An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

**501.** When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government-revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

**502.** When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

#### CHAPTER XXXVI.

##### APPOINTMENT OF RECEIVERS.

**503.** Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, moveable or immovable, the subject of a suit, or under attachment, the Court may by order—

(a) appoint a Receiver of such property, and, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(c) commit the same to the custody or management of such Receiver; and

(d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Every Receiver so appointed shall—

(e) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;

(f) pass his accounts at such periods and in such form as the Court directs;

(g) pay the balance due from him thereon as the Court directs; and

(h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.



**504.** Where the property is land paying revenue  
When Collector may be appointed Receiver. to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be Receiver of such property.

**505.** The powers conferred by this chapter shall  
Courts empowered under this chapter. be exercised only by High Courts and District Courts: Provided that whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

## PART V. OF SPECIAL PROCEEDINGS.

### CHAPTER XXXVII.

#### REFERENCE TO ARBITRATION.

**506.** If all the parties to a suit desire that any  
Parties to suit may apply for order of reference. matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

**507.** The arbitrator shall be nominated by the  
Nomination of arbitrator. parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such  
When Court to nominate arbitrator. nomination, or if the person whom they nominate refuses to accept the arbitration and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

**508.** The Court shall, by order, refer to the  
Order of reference. arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided

**509.** If the reference be to two or more arbitra-  
When reference is to two or more, order to provide for difference of opinion. tors, provision shall be made in the order for a difference of opinion among the arbitrators,

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

**510.** If the arbitrator, or, where there are more  
Death, incapacity, &c., of arbitrators or umpire. arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

**511.** Where the arbitrators are empowered by  
Appointment of umpire by Court. the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

**512.** Every arbitrator or umpire appointed under  
Powers of arbitrator or umpire appointed under sections 509, 510, 511. section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

**513.** The Court shall issue the same processes  
Summoning witnesses. to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Persons not attending in accordance with such  
Punishment for default, &c. process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

**514.** If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

**515.** When an umpire has been appointed he may enter on the reference in the place of the arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

**516.** When an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

**517.** Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award.

**518.** The Court may, by order, modify or correct an award.

(a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

**519.** The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

**520.** The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

(a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it.

**521.** An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely)—

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

**522.** If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

**523.** When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in court.

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decrees founded thereupon.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

526. If no ground such as is mentioned or referred to in section 520 or section 521, be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

#### CHAPTER XXXVIII.

##### OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

(a) a sum of money fixed by the parties or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

531. The case shall be set down for hearing as a suit instituted under Chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bona fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.

#### CHAPTER XXXIX.

##### OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies, all suits upon bills of exchange, hundis or promissory notes may, in case the plain-

tiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaintiff and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

*Explanation.*—This section is not confined to cases in which the bill, hundif or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

**533.** The Court shall, upon application by the defendant showing defence on merits to have leave to appear, upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

**534.** After decree, the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

**535.** In any proceeding under this chapter the Court may order the bill, hundif or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

**536.** The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

**537.** Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

**538.** Sections 532 to 537 (both inclusive) apply only to—

- (a) the High Courts of Judicature at Fort William, Madras and Bombay;
- (b) the Court of the Recorder of Rangoon;
- (c) the Courts of Small Causes in Calcutta, Madras and Bombay;
- (d) the Court of the Judge of Karachi; and
- (e) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may from time to time alter or cancel any such notification.

## CHAPTER XL.

### OF SUITS RELATING TO PUBLIC CHARITIES.

**539.** In case of any alleged breach of any express or constructive trust public charities may be created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General acting *ex officio*, or two or more persons having a direct interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

- (a) appointing new trustees under the trust;
- (b) vesting any property in the trustees under the trust;
- (c) declaring the proportions in which its objects are entitled;



(d) authorizing the whole or any part of its property to be let, sold, mortgaged or exchanged;

(e) settling a scheme for its management; or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Act No. X of 1840, section two, is hereby repealed.

## PART VI. OF APPEALS.

### CHAPTER XLI.

#### OF APPEALS FROM ORIGINAL DECREES.

**540.** Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

**541.** The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

**542.** The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

**543.** If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

**544.** Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

#### *Of staying and executing Decrees under Appeal.*

**545.** Execution of a decree shall not be stayed by reason only of an appeal not stayed solely by having been preferred against the decree; but the Appellate Court may for sufficient cause order the execution to be stayed:

If an application be made for stay of execution of an appealable decree before the expiry of the time for appealing has expired, the Court which passed the decree may for sufficient cause order the execution to be stayed:

Provided that no order shall be made under this section unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

**546.** If an order is made for the execution of a decree against which an order for execution of appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property, and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall on the application of the

judgment-debtor be stayed until the appeal is disposed of, on such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

**547.** No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

*Of Procedure in Appeal from Decrees.*

**548.** When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Such book shall be called the Register of Appeals.

**549.** The Appellate Court may at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

**550.** When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

**551.** The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.

**552.** The Appellate Court, unless where it confirms, under section 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

**553.** Notice of the day so fixed shall be stuck up in the appellate court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in Chapter VI for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

**554.** The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

*Procedure on Hearing.*

**555.** On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

**556.** If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence.

**557.** If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed:

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

**558.** If an appeal be dismissed under section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

**559.** If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

**560.** When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

**561.** Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal.

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

**562.** If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what issue or issues shall be tried in any case so remanded.

**563.** When a case is remanded with directions to take any evidence so excluded, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

**564.** The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

**565.** When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court shall, after resettling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

**566.** If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required,

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon together with the evidence.

**567.** Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by

the Appellate Court, present a memorandum of objections to the finding.

After the expiration of the period fixed for presentation of such memorandum, the Appellate Court shall proceed to determine the appeal.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced for any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

#### *Of the Judgment in Appeal.*

571. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

572. The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be

correct, shall be signed by the Judge or such officer as he appoints in this behalf.

574. The judgment of the Appellate Court shall state—

(a) the points for determination;

(b) the decision thereupon;

(c) the reasons for the decision; and,

(d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be

signed and dated by the Judge or by the Judges concurring therein.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the Appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may from time to time make rules consistent with this Code to regulate references under this section.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

577. The judgment may be for confirming, varying or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

578. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

*Of the Decree in Appeal.*

**579.** The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it:

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

**580.** Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

**581.** A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the appellate Court shall be made in the register of civil suits.

**582.** The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under Chapter V; and, in Chapter XXI, so far as may be, the words "plaintiff", "defendant" and "suit" shall be held to include an appellant, a respondent and an appeal, respectively, in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

The provisions hereinbefore contained shall apply to appeals under this chapter so far as such provisions are applicable.

**583.** When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

## CHAPTER XLII.

## OF APPEALS FROM APPELLATE DECREES.

**584.** Unless when otherwise provided by this Code or by any other law, Second appeals to High Court.

from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

(a) the decision being contrary to some specified law or usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

**585.** No second appeal shall lie except on the grounds mentioned in section 584.

**586.** No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

**587.** The provisions contained in Chapter XLI shall apply, as far as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.

## CHAPTER XLIII.

## OF APPEALS FROM ORDERS.

**588.** An appeal shall lie from the following Orders appealable. orders under this Code, and from no other such orders:—

(1) orders under section 20, staying proceedings in a suit;

(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;

(3) orders under section 36 or section 66, directing that a party shall appear in person;

(4) orders under section 41, adding a cause of action;

(5) orders under section 47, excluding a cause of action;

(6) orders returning plaints for amendment or to be presented to the proper Court;

(7) orders under section 111, setting-off, or refusing to set-off, one debt against another;

(8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;



(9) orders rejecting applications under section 108, or an order to set aside a decree *ex parte*;

(10) orders under sections 113, 120 and 177;

(11) orders under section 116 or section 215, rejecting, or returning for amendment, written statements or applications for execution of decrees;

(12) orders under sections 143 and 145, directing anything to be impounded;

(13) orders under section 162, for the attachment and sale of moveable property;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property;

(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;

(16) orders under section 274, the first paragraph of section 312 or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;

(17) orders in insolvency-matters, under section 351, section 352, section 353 or section 357;

(18) orders under section 366, paragraph two, section 367 or section 368;

(19) orders rejecting applications under section 370 for dismissal of a suit;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections, under section 372;

(22) orders under section 454, section 455 or section 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader-suits under section 473, clause (a), (b) or (d), section 475 or section 476;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502 or section 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court.

When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in

relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

590. The procedure prescribed in Chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect or irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

#### CHAPTER XLIV.

##### OF PAUPER APPEALS.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in Chapters XXVI, XLI, XLII and XLIII, in so far as those rules are applicable:

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

#### CHAPTER XLV.

##### OF APPEALS TO THE QUEEN IN COUNCIL.

594. In this chapter, unless there be something repugnant in the subject or context, the expression 'decree' includes also judgment and order.

**595.** Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained,

an appeal shall lie to Her Majesty in Council—

(a) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction;

(b) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(c) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

Value of subject-matter.

(b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

**597.** Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

**598.** Whoever desires to appeal under this chapter to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

**599.** Such application must ordinarily be made within six months from the date of such decree.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

**600.** Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

**601.** If such certificate be refused, the petition shall be dismissed:

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court to which the former Court is subordinate.

**602.** If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

(a) give security for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded:

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

**603.** When such security has been completed and deposit made to the satisfaction of the Court, the Court may

(a) declare the appeal admitted, and

(b) give notice thereof to the respondent, and shall then

(c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

**604.** At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

**605.** If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

**606.** If the appellant fail to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

**607.** When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602.

**608.** Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(a) impound any moveable property in dispute or any part thereof, or

(b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

**609.** If, at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

**610.** Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council, shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

**611.** The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

**612.** The High Court may, from time to time, make rules consistent with this Act to regulate—

- (a) the service of notices under section 600;
- (b) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court;
- (c) the amount and nature of the security required under sections 602, 603 and 609;
- (d) the testing of such security;

(e) the estimate of the cost of transcribing the record;

(f) the preparation, examination and certifying of such transcript;

(g) the revision and authentication of translations;

(h) the preparation of indices to transcripts of records, and of lists of the papers not included therein;

(i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council,

and all other matters connected with the enforcement of this chapter.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

**613.** All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

**614.** In sections 595 and 612, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

**615.** The rules and restrictions referred to in Bengal Regulation III of 1828, section IV, clause fifth, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

**616.** Nothing herein contained shall be understood—

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

## PART VII.

### CHAPTER XLVI.

#### OF REFERENCE TO AND REVISION BY THE HIGH COURT.

**617.** If before or on the hearing of a suit or an appeal in which the decree is final, or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

**618.** The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred;

but no execution shall be issued, property sold, or person imprisoned in any case in which reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

**619.** The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

**620.** Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.

**621.** When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

**622.** The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with

material irregularity; and may pass such order in the case as the High Court thinks fit.

## PART VIII.

### CHAPTER XLVII.

#### OF REVIEW OF JUDGMENT.

**623.** Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

**624.** Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

**625.** The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review.

**626.** If it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall

record with his own hand his reasons for such opinion:

*Provided that—*

(a) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation.

**627.** If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

**628.** If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

If there be a majority the decision shall be according to the opinion of the majority.

**629.** An order of the Court for rejecting the application shall be final; but whenever such application is admitted, the admission may be objected to on the ground that it was

(a) in contravention of the provisions of section 624,

(b) in contravention of the provisions of section 626, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.



No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

630. When an application for a review is granted, a note thereof shall be made in the register, and the Court may at once rehear the case or make such order in regard to the re-hearing as it thinks fit.

## PART IX.

### CHAPTER XLVIII.

#### SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

631. This chapter applies only to High Courts which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

632. Except as provided in this chapter the provisions of this Code apply to such High Courts.

633. The High Court shall take evidence, and record judgments and orders in such manner as it by rule from time to time directs.

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

and, as to so much thereof as relates to the costs, execution for costs that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

636. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary

and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order from time to time directs.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to do such act.

The High Court may from time to time by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary original civil jurisdiction, namely, sections 16, 17 and 19, sections 54, clauses (a) and (b), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum; and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

639. The High Court may from time to time frame forms for any proceeding in such Court, and may make rules as to the books, entries and accounts to be kept by its officers.

## PART X.

### CHAPTER XLIX.

#### MISCELLANEOUS.

640. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the

privilege of exemption, and may, by like notification, withdraw such privilege.

The names and residences of the persons so exempted shall from time to time be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of such Court subordinate to the High Court shall be kept in such subordinate Court.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

**642.** No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

**643.** When in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 215, section 206, section 207, section 208, section 209, section 240, section 463, section 471, section 474, section 476, section 477 or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

**644.** Subject to the power conferred on the High Court by section 63 and by the twenty-fourth and twenty-fifth of Victoria, chapter 164, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

**645.** The language which, when this Code comes into force, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until the Local Government otherwise orders;

but it shall be lawful for the Local Government from time to time to declare what language shall be the language of every such Court.

**645A.** In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

**646.** Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

**647.** The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

The High Court may from time to time make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

**648.** Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be

made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under Chapter XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him.

**649.** The rules contained in Chapter XIX shall

Rules applicable to all apply to the execution of civil process for arrest, any judicial process for the sale or payment. arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

In the same chapter, the expression 'Court which passed a decree', or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

**650.** The provisions of Chapters XIV and XV

Application of rules as relating to witnesses shall to witnesses. apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

**650 A.** Summonses issued by any Civil or Re-

Service of foreign venue Court situate beyond the limits of British India summonses.

may be sent to the Courts in British India and served as if they had been issued by such Courts: Provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

The Governor General in Council may by like notification cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

**651.** Whoever offers any resistance or illegal

Penalty for resisting obstruction to the lawful apprehension or escaping from custody under Code or civil process. apprehension of himself under this Code, or under the warrant of any Civil or Revenue

Court, or escapes or attempts to escape from any custody in which he is lawfully detained under this Code or under such warrant, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

**652.** The High Court may from time to time

Power to make subsidiary rules of procedure. make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

## THE FIRST SCHEDULE.

(See section 3.)

## ACTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
X of 1877	The Code of Civil Procedure	So much as has not been repealed.
XII of 1879	Amending Act X of 1877, &c.	Sections one to one hundred and three (both inclusive).
VII of 1880	Merchant Shipping	Section eighty-five.

## THE SECOND SCHEDULE.

(See section 5.)

## Chapters and Sections of this Code extending to Provincial Courts of Small Causes.

## PRELIMINARY: Sections 1, 2, 3 and 5.

CHAPTER	I.—Of the Jurisdiction of the Courts and <i>Res Judicata</i> , except section 11.
CHAPTER	II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).
CHAPTER	III.—Of Parties and their Appearances, Applications and Acts.
CHAPTER	IV.—Of the Frame of the Suit, except section 42 and section 44, rule a.
CHAPTER	V.—Of the Institution of Suits.
CHAPTER	VI.—Of the Issue and Service of Summons, except section 77.
CHAPTER	VII.—Of the Appearance of the Parties and Consequence of Non-appearance.
CHAPTER	VIII.—Section 111, Set-off.
CHAPTER	IX.—Of the examination of the Parties by the Court, except section 119.
CHAPTER	X.—Of Discovery and the Admission, &c., of Documents.
CHAPTER	XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.
CHAPTER	XIII.—Of Adjournments.
CHAPTER	XIV.—Of the Summoning and Attendance of Witnesses.
CHAPTER	XV.—Of the Hearing of the suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).
CHAPTER	XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.
CHAPTER	XVIII.—Sections 220, 221 and 222, Of Costs.
CHAPTER	XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 280 (both inclusive), 283, 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive), so far as relates to moveable property), 336 to 343 (both inclusive).
CHAPTER	XX.—Section 360, Power to invest certain Courts with Insolvency-jurisdiction.
CHAPTER	XXI.—Of the Death, Marriage and Insolvency of Parties.
CHAPTER	XXII.—Of the Withdrawal and Adjustment of Suits.
CHAPTER	XXIII.—Of payment into Court.
CHAPTER	XXIV.—Of requiring Security for Costs.
CHAPTER	XXV.—Of Commissions.
CHAPTER	XXVI.—Suits by Paupers.
CHAPTER	XXVII.—Suits by and against Government or Government Servants.
CHAPTER	XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.
CHAPTER	XXIX.—Suits by and against Corporations and Companies.

## THE SECOND SCHEDULE—concluded.

Chapters and Sections of this Code extending to Provincial Courts of Small Causes—concluded.

CHAPTER	XXX.—Suits by and against Trustees, Executors and Administrators.
CHAPTER	XXXI.—Suits by and against Minors and Persons of unsound Mind.
CHAPTER	XXXII.—Suits by and against Military Men.
CHAPTER	XXXIII.—Interpleader.
CHAPTER	XXXIV.—Of Arrest and Attachment before Judgment, except as regards immoveable property.
CHAPTER	XXXV.—Appointment of Receivers.
CHAPTER	XXXVI.—Reference to Arbitration, sections 506 to 526 (both inclusive).
CHAPTER	XXXVII.—Of Proceedings on Agreement of Parties.
CHAPTER	XXXVIII.—Reference to and Revision by High Court.
CHAPTER	XXXIX.—Of Review of Judgment.
CHAPTER	XL.—Miscellaneous, sections 640 to 647 (both inclusive), sections 648 to 652 (both inclusive).

## THE THIRD SCHEDULE.

(See section 7.)

## Bombay Enactments.

Bombay Regulation XXIX, 1827.
" " VII, 1830.
" " I, 1831.
" " XVI, 1831.
Act XIX of 1835.
" XIII of 1842.

## THE FOURTH SCHEDULE.

(See section 644.)

## FORMS OF PLEADINGS AND DECREES.

## A.—PLAINTS, PART I.

No. 1.

FOR MONEY LENT.

IN THE COURT OF , AT  
Civil Suit No.

A. B. of  
against  
C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , he lent the defendant rupees repayable on demand [or on the day of ].
2. That the defendant has not paid the same, except rupees paid on the day of 18 .

[ If the plaintiff claims exemption from any law of limitation, say:—

3. The plaintiff was a minor [ or insane ] from the day of till the day of .
4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[ NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A. B and C. D., the above-named plaintiffs, state as follows:—

1. That on the day of 18 , at , the defendant received rupees [or a cheque on the Bank for rupees] from one E. F. for the use of the plaintiffs.
2. That the defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .



## THE FOURTH SCHEDULE—continued.

## No. 3.

## FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , he and E. F., since deceased, delivered to the defendant [ one thousand barrels of flour, five hundred maunds of rice, or as the case may be ] for sale upon commission.
2. That on the day of 18, [ or, on some day unknown to the plaintiff, before the day of 18 ], the defendant sold the said merchandise for rupees.
3. That the commission and expenses of the defendant thereon amount to rupees.
4. That on the day of 18, the plaintiff demanded from the defendant the proceeds of the said merchandise.
5. That he has not paid the same.

[ Demand of judgment. ]

## No. 4.

## FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.
2. That the plaintiff procured the said bars, to be assayed by one E. F., who was paid by the defendant for such assay, and that the said E. F. declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant Re. annas therefor.
3. That each of the said bars did contain only 1,200 tolas of fine silver.
4. That the defendant has not repaid the sum so overpaid.

[ Demand of judgment. ]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

## No. 5.

## FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , at the request [ or by the authority ] of the defendant, the plaintiff paid to one E. F. rupees.
2. That, in consideration thereof, the defendant promised [ or became bound ] to pay the same to the plaintiff on demand [ or as the case may be ].
3. That [ on the day of 18, the plaintiff demanded payment of the same from the defendant, but ] he has not paid the same.

[ Demand of judgment. ]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

## No. 6.

## FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , E. F., of , deceased, sold and delivered to the defendant [ one hundred barrels of flour, or, the goods mentioned in the schedule hereto annexed, or, sundry goods ].
2. That the defendant promised to pay rupees for the said goods on delivery [ or, on the day of some day before the plaint was filed ].
3. That he has not paid the same.
4. That the said E. F., in his lifetime made his will, whereby he appointed the plaintiff executor thereof.
5. That on the day of 18, the said E. F. died.
6. That on the day of probate of the said will was granted to the plaintiff by the Court of .
7. The plaintiff as executor as aforesaid [ Demand of judgment ].

[NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest.]

## THE FOURTH SCHEDULE—continued.

## No. 7.

## GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the                      day of                      18                      , at                      , plaintiff sold and delivered to the defendant [ sundry articles of house-furniture ] but no express agreement was made as to the price.
2. That the same were reasonably worth                      rupees.
3. That the defendant has not paid the same.

[ Demand of judgment. ]

(NOTE.—The law implies a promise to pay so much as the goods are reasonably worth.)

## No. 8.

## FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the                      day of                      18                      , at                      , plaintiff sold to the defendant [ one hundred barrels of flour ] and, at the request of the defendant, delivered the same to one E. F.
2. That the defendant promised to pay to the plaintiff                      rupees therefor.
3. That he has not paid the same.

[ Demand of judgment. ]

## No. 9.

## FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the                      day of                      18                      , at                      , plaintiff furnished to [ Mary Jones ] the wife of [ James Jones ] deceased, at her request, sundry articles of [ food and clothing ], but no express agreement was made as to the price.
2. That the same were necessary for her.
3. That the same were reasonably worth                      rupees.
4. That the said James Jones refused to pay the same.
5. That the defendant is the executor of the last Will of the said James Jones.

[ Demand of judgment. ]

## No. 10.

## FOR GOODS SOLD AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the                      day of                      18                      , at                      , the plaintiff sold to E. F., of                      , deceased, [ all the crops then growing on his farm in                      ].
2. That the said E. F. promised to pay the plaintiff                      rupees for the same.
3. That he did not pay the same.
4. That the defendant is administrator of the estate of the said E. F.

[ Demand of judgment. ]

## THE FOURTH SCHEDULE—continued.

## No. 11.

## FOR GOODS SOLD AT A REASONABLE PRICE.

## (Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the            day of            18            , at            , *E. F.*, of            , but no express agreement was made as to the price.
2. That the same was reasonably worth            rupees.
3. That the defendant has not paid the same.
4. That on the            day of            the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.
5. The plaintiff as committee as aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following:—]

4. That on the            day of            the Civil Court of            duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff Manager of his estate.
5. The plaintiff as Manager as aforesaid.

[*Demand of judgment.*]

## No. 12.

## FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

## (Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the            day of            18            , at            , *E. F.*, of            , agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E. F.* should pay for the same upon delivery thereof            rupees.
2. That the plaintiff made the said goods, and on the            day of            18            , offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do.
3. That the said *E. F.* has not accepted the said goods or paid for the same.
4. That on the            day of            18            , the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic, and appointed the defendant committee of his estate.
5. The plaintiff prays judgment for            rupees with interest from the            day of            , at the rate of            per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

## No. 13.

## FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

## (Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the            day of            18            , at            , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale, should be re-sold by auction on his account, of which condition the defendant had notice.
2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of            rupees.
3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.
4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.
5. That on the            day of            18            , at            , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for            rupees.
6. That the expenses attendant upon such re-sale amounted to            rupees.
7. That the defendant has not paid the deficiency thus arising, amounting to            rupees.

[*Demand of judgment.*]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods; see Act IX of 1872, section 93.]

## THE FOURTH SCHEDULE—continued.

## No. 14.

## FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , the plaintiff sold [and conveyed] to the defendant [the house and compound No.            , in the city of            or, a farm known as            , in            or, a piece of land lying, &c.]
2. That the defendant promised to pay the plaintiff            rupees for the said [house and compound, or farm, or land].
3. That he has not paid the same.

[Demand of judgment.]

[Note.—Where there has been no actual conveyance, say, in § 1. "sold to the defendant the house, &amp;c., and placed him in possession of the same."]

## No. 15.

## FOR THE PURCHASE-MONEY OF IMMOVABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No.            , in the town of            , or one hundred bighás of land in            , bounded by the East Indian railroad, and by other lands of the plaintiff] for            rupees.
2. That on the            day of            18            , at            , the plaintiff tendered [or, was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.
3. That the defendant has not paid the said sum.

[Demand of judgment.]

## No. 16.

## FOR SERVICES AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the            day of            18            , at            , the defendant [hired plaintiff as a clerk, at the salary of            rupees per year].
2. That from the [said day] until the            day of            18            , the plaintiff served the defendant as his [clerk].
3. That the defendant has not paid the said salary.

[Demand of judgment.]

## No. 17.

## FOR SERVICES AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That between the            day of            18            , and the            day of            18            at            , plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.
2. That the said services were reasonably worth            rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

## THE FOURTH SCHEDULE—continued.

No. 18.

## FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff [furnished the paper for and printed one thousand copies of a book called       ] for the defendant, at his request [and delivered the same to him].
2. That the defendant promised to pay       rupees therefor.
3. That he has not paid the same.

[Demand of judgment.]

No. 19.

## FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff built a house [known as No.       in       ], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.
2. That the said work and materials were reasonably worth       rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 20.

## FOR RENT RESERVED IN A LEASE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed. [Or state the substance of the contract.]
2. That the defendant has not paid the rent of the [month] ending on the       day of       18       , amounting to       rupees.

[Demand of judgment.]

## Another Form.

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years to hold from the       day of       18       , at       rupees a year, payable quarterly.
2. That of such rent       quarters are due and unpaid.

[Demand of judgment.]

No. 21.

## FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant hired from the plaintiff [the house No.       street], at the rent of       rupees, payable       on the first day of       day of       18       .
2. That the defendant occupied the said premises from the       day of       18       .
3. That the defendant has not paid       rupees, being the part of said rent due on the first day of       18       .

[Demand of judgment.]



## THE FOURTH SCHEDULE—continued.

No. 22.

## FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows:—

1. That the defendant occupied the [house No. , street], by permission of the said X. Y., from the day of 18 , until the day of 18 , and no agreement was made as to payment for the use of the said premises.
2. That the use of the said premises for the said period was reasonably worth rupees.
3. That the defendant has not paid the same.
4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23

## FOR BOARD AND LODGING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That from the day of 18 , until the day of 18 , the defendant occupied certain rooms in the house [No. , street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessaries.
2. That, in consideration thereof, the defendant promised to pay [or That no agreement was made as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth] the sum of rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 24.

## FOR FREIGHT OF GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff transported in [his barge, or otherwise] [one thousand barrels of flour, or sundry goods], from to , at the request of the defendant.
2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [or, That no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 25.

## FOR PASSAGE-MONEY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff conveyed the defendant [in his ship, called the , from to , at his request.
2. That the defendant promised to pay the plaintiff rupees therefor. [or That no agreement was made as to the price of the said passage, but the said passage was reasonably worth rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

## THE FOURTH SCHEDULE—continued.

No 26.

ON AN AWARD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of E. F. and G. H., as arbitrators [or, entered into an agreement, a copy of which is hereto annexed].
2. That on the       day of       18       , at       , the said arbitrators awarded that the defendant should [pay the plaintiff       rupees].
3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—This will apply where the agreement to refer is not filed in court.]

No. 27.

ON A FOREIGN JUDGMENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , in the State [or Kingdom] of       , the       Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff       rupees, with interest from the said date.
2. That the defendant has not paid the same.

[Demand of judgment.]

## PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant by his bond became bound to the plaintiff in the sum of       rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff       rupees half-yearly on the       day of       and the       day of       in every year during the life of the plaintiff, the said bond should be void.
2. That afterwards, on the       day of       18       , the sum of       rupees for of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[Demand of judgment.]

No. 29.

PAYER AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant, by his promissory note now overdue, promised to pay to the plaintiff       rupees [days] after date.
2. That he has not paid the same [except       rupees, paid on the       day of       18       ].

[Demand of judgment.]

[NOTE.—Where the note is payable after notice, for paragraphs 1 and 2 substitute:—]

1. That on the       day of       18       , at       , the defendant by his promissory note promised to pay to the plaintiff       rupees       months after notice.

## THE FOURTH SCHEDULE—continued.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.
3. That the said time for payment has elapsed, but the defendant has not paid the same.

[Where the note is payable at a particular place, say—]

1. That on the            day of            18            , at            , the defendant by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. A. & Co.'s, Madras]            rupees            months after date.
2. That the said note was duly presented for payment [at Messrs. A. & Co.'s] aforesaid, but has not been paid.

## Written Statement of the Defendant.

IN THE COURT, &c.

C. D., the above-named defendant, states as follows:—

1. The defendant made the note sued upon under the following circumstances: The plaintiff and defendant had for some years been in partnership as indigo-manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.
2. The plaintiff thereupon undertook to examine the partnership-books and inquire into the state of the partnership-assets and liabilities; and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000 and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000 and the liabilities of the firm largely exceeded the assets.
3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

## FIRST INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the            day of            18            , at            , the defendant, by his promissory note, now overdue, promised to pay to the order of E. F. [or to E. F. or order] rupees [            days after date].
2. That the said E. F. indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment].

No. 31.

## SUBSEQUENT INDORSEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. [As in the last preceding form.]
2. That the same was, by the indorsement of the said E. F. and of G. H. and I. J. [or and others] transferred to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment].

No. 32

## FIRST INDORSEE AGAINST FIRST INDORSEE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That E. F., on the            day of            18            , at            , by his promissory note, now overdue, promised to pay to the defendant or order            rupees            months after date.

## THE FOURTH SCHEDULE—continued.

2. That the defendant indorsed the same to the plaintiff.  
 3. That on the day of 18, the same was duly presented for payment, but was not paid.

[Or state facts excusing want of presentment.]

4. That the defendant had notice thereof.  
 5. That he has not paid the same.

[Demand of judgment.]

## No. 33.

## SUBSEQUENT INDORSEER AGAINST FIRST INDORSEER; THE INDORSEMENT BEING SPECIAL.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one E. F. a promissory note, now overdue, made [or purporting to have been made] by one G. H., on the day of 18, at , to the order of the defendant, for the sum of rupees [payable days after date].  
 2. That the same was, by the indorsement of the said E. F. [and others], transferred to the plaintiff. [or That the said E. F. indorsed the same to the plaintiff.]  
 3, 4 and 5. [Same as 3, 4 and 5 of the last preceding form.]

[Demand of judgment.]

## No. 34.

## SUBSEQUENT INDORSEER AGAINST HIS IMMEDIATE INDORSEER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [or purporting to have been made] by one E. F., on the day of 18, at , to the order of one G. H., for the sum of rupees [payable days after date], and indorsed by the said G. H. to the defendant.  
 2, 3 and 4. [Same as in 3, 4 and 5 in Form No. 33.]

[Demand of judgment.]

## No. 35.

## SUBSEQUENT INDORSEER AGAINST INTERMEDIATE INDORSEER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [or purporting to have been made] by one E. F., on the day of 18, at , to the order of one G. H., for the sum of rupees [payable days after date], and indorsed by the said G. H. to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.  
 2, 3 and 4. [As in No. 33.]

[Demand of judgment.]

## No. 36.

## SUBSEQUENT INDORSEER AGAINST MAKER, AND FIRST AND SECOND INDORSEER.

IN THE COURT OF

AT

Civil Suit No.

A. B. of

against

C. D. of

E. F. of

and

G. H. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant, C. D., by his promissory note, now overdue, promised to pay to the order of the defendant, E. F., rupees [months after date].

THE FOURTH SCHEDULE—*con inued.*

2. That the said E. F. indorsed the same to the defendant, G. H., who indorsed it to the plaintiff.
3. That on the                      day of                      18                      , the same was presented [*or state facts excusing want of presentment*] to the said G. H. for payment, but was not paid.
4. That the said E. F. and G. H. had notice thereof.
5. That they have not paid the same.

[ Demand of judgment. ]

No. 37.

DRAWER AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him                      rupees [                      days after date, or sight, thereof].
2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*]
3. That he has not paid the same.
4. That by reason thereof the plaintiff incurred expenses in                      and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[ Demand of judgment. ]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say—]

1. That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to E. F. or order                      rupees                      months after date.
2. That the plaintiff delivered the said bill to the said E. F. on                      .
3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

PAYEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one E. F., on the                      day of                      18                      , at                      , requiring the defendant to pay to the plaintiff                      rupees                      .
2. That he has not paid the same.

[ Demand of judgment. ]

No. 39.

FIRST INDORSER AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , the defendant accepted a bill of exchange, now overdue, made [*or purporting to have been made*] by one E. F., on the                      day of                      18                      , at                      , requiring the defendant to pay to the order of one G. H.                      rupees                      after sight thereof.
2. That the said G. H. indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[ Demand of judgment. ]



## THE FOURTH SCHEDULE—continued.

No. 40.

SUBSEQUENT INDORSEER AGAINST ACCEPTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. [*As in the last preceding form, to the end of article 1.*]
2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 41.

PAYER AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , the defendant by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff      rupees [      days after sight.]
2. That on the      day of      18      , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 42.

FIRST INDORSEER AGAINST FIRST INDORSEER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the      day of      18      , at      , requiring one *G. H.* to pay to the order of the defendant      rupees [      days] after sight [or after date, or at sight] thereof, [and accepted by the said *G. H.* on the      day of      18      ].
2. That on the      day of      18      , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 43.

SUBSEQUENT INDORSEER AGAINST FIRST INDORSEER; THE INDORSEMENT BEING SPECIAL.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made [or purporting to have been made] by one *G. H.*, on the      day of      18      , at      , requiring one *I. J.* to pay to the order of the defendant      rupees      days after sight thereof [or otherwise], and accepted by the said *I. J.* on the      day of      18      .

[This clause may be omitted if not according to the fact.]

## THE FOURTH SCHEDULE—continued.

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.
3. That on the                      day of                      18                      the same was presented to the said *I. J.* for payment, and was dishonoured.
4. That the defendant had due notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

## No. 44.

## SUBSEQUENT INDORSEER AGAINST HIS IMMEDIATE INDORSEER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the                      day of                      18                      , at                      , requiring one *G. H.* to pay to the order of *I. J.*                      rupees                      days after sight thereof [or otherwise], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant.
2. That on the                      day of                      18                      , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

## No. 45.

## SUBSEQUENT INDORSEER AGAINST INTERMEDIATE INDORSEER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That a bill of exchange, now overdue, made [or purporting to have been made] by one *E. F.*, on the                      day of                      18                      , at                      , requiring one *G. H.* to pay to the order of one *I. J.*                      rupees                      days after sight thereof [or otherwise], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.
2. That on the                      day of                      18                      , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

## No. 46.

## INDORSEER AGAINST DRAWER, ACCEPTOR AND INDORSEER.

IN THE COURT OF

, AT

Civil Suit No.                      .

*A. B.* of  
against  
*C. D.* of  
*E. F.* of  
and  
*G. H.* of

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , at                      , the defendant *C. D.*, by his bill of exchange, now overdue, directed to the defendant *A. F.*, required the said *E. F.* to pay to the order of the defendant *G. H.*                      rupees [                      days after sight thereof.]

## THE FOURTH SCHEDULE—continued.

2. That on the            day of            18            , the said E. F. accepted the same.
3. That the said G. H. indorsed the same to the plaintiff.
4. That on the            day of            18            , the same was presented to the said E. F. for payment, and was dishonoured.
5. That the other defendants had due notice thereof.
6. That they have not paid the same.

[Demand of judgment.]

## No. 47.

## PAYER AGAINST DRAWER FOR NON-ACCEPTANCE OF A FOREIGN BILL.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the            day of            18            , at            , the defendant by his bill of exchange, drawn in Calcutta, required one E. F. to pay to the plaintiff in [London] pounds sterling, [sixty days] after sight thereof.
2. That on the            day of            18            , the same was presented to the said E. F. for acceptance, and was dishonoured, and was thereupon duly protested.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[5. That the value of            pounds sterling, at the time of the service of notice of protest on the defendant, was            rupees            annas.]

Wherefore the plaintiff demands judgment against the defendant for            18            rupees, with [ten per centum] compensation and interest from the            day of            18            .

## No. 48.

## PAYER AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the            day of            18            , at            , one E. F., by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff            rupees after date [or            days after sight] thereof.
2. That on the            day of            18            , the defendant accepted the said bill.
3. That he has not paid the same.

[Demand of judgment.]

## No. 49.

## ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE SEA, &amp;c.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff was the owner of [or had an interest in] the ship            at the time of her loss, as hereinafter mentioned.
2. That on the            day of            18            , at            , the defendants, in consideration of            rupees to them paid [or which the plaintiff then promised to pay] executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [or, whereby they promised to pay to the plaintiff, within            days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from            to            , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding            rupees].

## THE FOURTH SCHEDULE—continued.

3. That the said ship, while proceeding on the voyage mentioned in the said policy, was on the day of 18 , totally lost by the perils of the sea [or otherwise].
4. That the plaintiff's loss thereby was rupees.
5. That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.
6. That the defendants have not paid the said loss.

[Demand of judgment.]

No. 50.

## ON CARGO, LOST BY FIRE—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss as hereinafter mentioned.
2. That on the day of 18 , at the defendants, in consideration of rupees which the plaintiff then paid [or promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed; [or, whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; or, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].
3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (or, as the case may be).
- 4, 5 and 6. [As in paragraphs 4, 5 and 6 of the last preceding form.]

[Demand of judgment.]

No. 51.

## ON FREIGHT:—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to , at the time of her loss as hereinafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.
2. That on the day of 18 , at the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [or state its tenor, as before].
3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].
4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.
- 5 and 6. [As in Form No 49.]

[Demand of judgment.]

No. 52.

## FOR A LOSS BY GENERAL AVERAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [or had an interest in] [one hundred bales of cotton] shipped on board a vessel called the F. Z., from to , at the time of the loss hereafter mentioned.
2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [or state its tenor, as before].

## THE FOURTH SCHEDULE—continued.

3. That on the       day of       18       , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of       rupees.

5. That on the       day of       18       , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[Demand of judgment.]

No. 53.

FOR A PARTICULAR AVERAGE LOSS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1 and 2. [As in the last preceding form.]

3. That on the       day of       18       , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of       rupees.

4 and 5. [As in paragraphs 5 and 6 of the last preceding form.]

[Demand of judgment.]

No. 54.

ON A FIRE-INSURANCE POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, or] had an interest in a [dwelling-house, known as No.       street, in the city of       ] at the time of its destruction [or, injury] by fire as hereinafter mentioned.

2. That on the       day of       18       , at       , in consideration of       rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [or state its tenor].

3. That on the       day of       18       , the said [dwelling-house] was totally destroyed [or, greatly damaged] by fire.

4. That the plaintiff's loss thereby was       rupees.

5. That on the       day of       18       , he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.       in the       [or state its tenor].

[Demand of judgment.]

No. 55.

AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , one E. F. hired from the plaintiff, for the term of       years, the [house No.       street       ] at the annual rent of       rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said E. F., to guarantee the punctual payment of the said rent.

4 d 8



## THE FOURTH SCHEDULE—continued.

3. That the rent aforesaid for the month of 18 , amounting to rupees, has not been paid.
- [If, by the terms of the agreement, notice is required to be given to the surety, add:—]
4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.
5. That he has not paid the same.

[Demand of judgment.]

## B.—PLAINTS FOR COMPENSATION FOR BREACH OF CONTRACT.

No. 56.

## FOR BREACH OF AGREEMENT TO CONVEY LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed. [Or, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at , execute to the plaintiff a sufficient conveyance of [the house No. , street, in the city of , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof].
2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant and tendered rupees to the defendant [or, That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part.]
3. That the defendant has not executed any conveyance of the said property to the plaintiff [or, That there is a mortgage upon the said property, made by to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, or any other defect of title].
4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.
5. The plaintiff prays judgment for rupees compensation.

No. 57.

## FOR BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed. [Or, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighás of land in the village of , for rupees.]
2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [or, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument,] on the payment by the defendant of the said sum.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 58.

Another Form.

## FOR NOT COMPLETING A PURCHASE OF IMMOVABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That by an agreement dated the day of 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say):—
- (a) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.
- (b) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.
2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.
3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[Demand of judgment.]

## THE FOURTH SCHEDULE—continued.

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff [on the       day of       18       ], and that the plaintiff should pay therefor       rupees on delivery.
2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.
3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[Demand of judgment.]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, or in the capacity of foreman, or as the case may be], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services       rupees [monthly].
2. That on the       day of       18       , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.
3. That on the       day of       18       , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[Demand of judgment.]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. [As in last preceding Form.]
2. That on the       day of       18       , at       , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.
3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[Demand of judgment.]

No. 62.

FOR BREACH OF CONTRACT TO SERVE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of       rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].
2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the       day of       18       , offered so to do].
3. That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the       day of       18       , he refused to serve the plaintiff as aforesaid.

(Demand of judgment.)

No. 63.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

[Or state the tenor of the contract.]

2. That the plaintiff duly performed all the conditions of the said agreement on his part.]

## THE FOURTH SCHEDULE—continued.

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[Demand of judgment.]

No. 64.

BY THE MASTER AGAINST THE FATHER OR GUARDIAN OF AN APPRENTICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant entered into an agreement, under his hand and seal,\* a copy of which is hereto annexed.

[Or state the tenor of the contract.]

2. That after the making of the said agreement the plaintiff received the said [apprentice] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That on the       day of       18       , the said [apprentice] wilfully absented himself from the service of the plaintiff, and continues so to do.

(Demand of judgment.)

No. 65.

BY THE APPRENTICE AGAINST THE MASTER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant entered into an agreement with the plaintiff and his [father], E. F., under their hands and seals, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not instructed the plaintiff in the business of       [or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment].

[Demand of judgment.]

No. 66.

ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff employed one E. F. as a clerk.

2. That on the       day of       18       , at       , the defendant agreed with the plaintiff, that if the said E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding       rupees.

[Or, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of       rupees, conditioned that if the said E. F. should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise.]

[Or, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the       day of       18       , and the       day of       18       , the said E. F. received money and other property, amounting to the value of       rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[Demand of judgment.]

No. 67.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant, by an instrument in writing, let to the plaintiff the house No.       street], for the term of       years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the       day of       during the said term, one E. F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend       rupees in moving, and lost the custom of G. H. and I. J. by such removal].

[Demand of judgment.]

\* The form given in Act XIX of 1880 requires the seal of the father or guardian.

## THE FOURTH SCHEDULE—continued.

No. 68.

## FOR BREACH OF WARRANTY OF MOVABLES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

That on the day of 18, at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[ Demand of judgment. ]

No. 69.

## ON AN AGREEMENT OF INDEMNITY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the plaintiff and defendant being partners in trade under the firm of A. B. & C. D., dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3. That on the day of 18, [a judgment was recovered against the plaintiff and defendant by one E. F., in the High Court of Judicature at , upon a debt due from the said firm to the said E. F., and on the day of 18, ] the plaintiff paid rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[ Demand of judgment. ]

No. 70.

## BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[ Or, 1. That on the day of 18, at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at , five hundred tons of merchandise, which she should carry to on the day of 18, and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day.]

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive [the said merchandise, or, the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

## C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

## FOR TRESPASS ON LAND.

(Title.)

A. B., the above-named plaintiff, states as follows:—

That on the day of 18, at , the defendant entered upon certain land of the plaintiff, known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same].

[ Demand of judgment. ]

No. 72.

## FOR TRESPASS IN ENTERING A DWELLING-HOUSE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant entered a dwelling-house of the plaintiff called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[ Demand of judgment. ]

## THE FOURTH SCHEDULE—continued.

No. 73.

## FOR TRESPASS ON MOVEABLES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street or, seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, or as the case may be, and carried away the same and disposed of them to his own use :  
or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.
2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [otherwise, state the injury according to the facts].

[Demand of judgment.]

No. 74.

## FOR THE CONVERSION OF MOVEABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, plaintiff was in possession of certain goods described in the schedule hereto annexed [or, of one thousand barrels of flour].
2. That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[Demand of judgment.]

The schedule.

No. 75

## AGAINST A WAREHOUSEMAN FOR REFUSAL TO DELIVER GOODS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant, in consideration of the payment to him of rupees [or, rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.
2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].
3. That on the day of 18, the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [or the full amount of storage due thereon], but the defendant refused to deliver the same.
4. That the plaintiff was thereby prevented from selling the said goods to E. F., and the same are lost to the plaintiff.

[Demand of judgment.]

No. 76.

## FOR PROCURING PROPERTY BY FRAUD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].
2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.
3. That the said representation was false [or, state the particular falsehoods], and were then known by the defendant to be so.
4. That the defendant has not paid for the said goods. [Or, if the goods were not delivered, That the plaintiff, in preparing and shipping the said goods and procuring their restoration, expended rupees.]

[Demand of judgment.]

No. 77.

## FOR FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant represented to the plaintiff that one E. F. was solvent and in good credit, and worth rupees over all his liabilities [or, that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].
2. That the plaintiff was thereby induced to sell to the said E. F. [rice] of the value of rupees [on month's credit].



## THE FOURTH SCHEDULE—continued.

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or, to deceive and injure the plaintiff].
4. That the said *B. P.* [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[Demand of judgment.]

No. 78.

## FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called \_\_\_\_\_ and situate in \_\_\_\_\_, and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.
2. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.
3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[Demand of judgment.]

No. 79.

## FOR CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called \_\_\_\_\_ situate in \_\_\_\_\_.
2. That ever since the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.
3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.
4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[Demand of judgment.]

No. 80.

## FOR OBSTRUCTING A WAY.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of \_\_\_\_\_].
2. That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, or, on foot] at all times of the year.
3. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, or, on foot, or, in any manner] along the said way [and has ever since wrongfully obstructed the same].
4. [State special damage, if any.]

[Demand of judgment.]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from \_\_\_\_\_ to \_\_\_\_\_ so as to obstruct it.
2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [or, into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[Demand of judgment.]

No. 81.

## FOR DIVERTING A WATER-COURSE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the \_\_\_\_\_, in the village of \_\_\_\_\_, district of \_\_\_\_\_.

## THE FOURTH SCHEDULE—continued.

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the day of 18, the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That by reason thereof, the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[Demand of judgment.]

No. 82.

## FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c. and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[Demand of judgment.]

No. 83.

## FOR WASTE BY A LESSEE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, the defendant hired from him [the house No. street] for the term of

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors; or otherwise specify the injuries as far as possible].

The plaintiff prays judgment for rupees compensation.

No. 84.

## FOR ASSAULT AND BATTERY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

That on the day of 18, at the defendant assaulted and beat him

The plaintiff prays judgment for rupees compensation.

No. 85.

## FOR ASSAULT AND BATTERY, WITH SPECIAL DAMAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [Or otherwise state the damage, as the case may be.]

[Demand of judgment.]

No. 86.

## FOR ASSAULT AND FALSE IMPRISONMENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at the defendant assaulted the plaintiff and imprisoned him for days [or hours]; [state special damage, if any, thus:—]

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [or otherwise, as the case may be.]

[Demand of judgment.]

## THE FOURTH SCHEDULE—continued.

No. 87.

FOR INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the            day of            18           , the defendants were common carriers of passengers by railway between            and           .
2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.
3. That while he was such passenger, at            [or, near the station of           ] ; or, between the stations of            and           , a collision occurred on the said railway, caused by the negligence and unskillfulness of the defendant's servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., and state the special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[Demand of judgment.]

[Or thus:— 2. That on that day the defendants by their servants so negligently and unskillfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, &c., as in § 3.]

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at           . The defendant is a merchant of           .
2. On the 23rd May, 1875, the plaintiff was walking eastward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.
3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims            rupees damages.

(Title.)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. E. F. and G. H.] of            Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. E. F. and G. H.].
2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.
3. The defendant says, that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.
4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

FOR LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the            day of            18           , at           , the defendant published in a newspaper, called the            [or, in a letter addressed to E. F.], the following words concerning the plaintiff:—

[Set forth the words used.]

2. That the said publication was false and malicious.

[Demand of judgment.]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—“Which said words, being translated into the            language, have the meaning and effect following and were so understood by the persons to whom they were so published, that is to say [here set out a literal translation of the libel in the language of the Court.]”

## THE FOURTH SCHEDULE—continued.

No. 90.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the day of 18, a merchant doing business in the city of
2. That on the day of 18, at , the defendant published in a newspaper, called the [or, in a letter addressed to E. F., or otherwise now published], the following words concerning the plaintiff:—  
[“A. B. of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address.”]
3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].
4. That the said publication was false and malicious.

[Demand of judgment.]

No. 91.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant falsely and maliciously spoke, in the hearing of E. F. [or, sundry persons], the following words concerning the plaintiff: [“He is a thief”].
2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of

[Demand of judgment.]

No. 92.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant falsely and maliciously said to one E. F. concerning the plaintiff: [“He is a young man of remarkably easy conscience.”]
2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.
3. That in consequence of the said words [the said E. F. refused to employ the plaintiff as a clerk].

[Demand of judgment.]

No. 93.

FOR MALICIOUS PROSECUTION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant obtained a warrant of arrest from [a magistrate of the said city, or, as the case may be] on a charge of , and the plaintiff was arrested thereon, and imprisoned for hours, and gave bail in the sum of rupees to obtain his release.
2. That in so doing, the defendant acted maliciously and without reasonable or probable cause.
3. That on the day of 18, the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.
4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F., or, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[Demand of judgment.]

## D.—PLAINTS IN SUITS FOR SPECIFIC PROPERTY.

No. 94.

BY THE ABSOLUTE OWNER FOR THE POSSESSION OF IMMOVABLE PROPERTY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That X. Y. was the absolute owner [of the estate, or, the share of the estate, called , situate in the district of , the Government-revenue of which is rupees and the estimated value rupees, or, of the house No. , street in the town of Calcutta, the estimated value of which is rupees].

## THE FOURTH SCHEDULE—continued.

2. That on the                      day of                      18                      , *Z* illegally dispossessed the said *X. Y.* of the said estate [or share or house].
3. That the said *X. Y.* has since died intestate, leaving the plaintiff, the said *A. B.*, his heir him surviving.
4. That the defendant withholds the possession of the estate [or share or house] from the plaintiff.
- The plaintiff prays judgment:
- (1) for the possession of the said premises;
- (2) for                      rupees compensation for withholding the same.

## Another Form.

*A. B.*, the above-named plaintiff, states as follows:—

1. On the                      day of                      , the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the                      ] for a term of five years from the                      day of                      , at the monthly rent of 300 rupees.
2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.
3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.
4. On the                      day of                      18                      , a month's rent became due, and on the                      day of                      18                      , another month's rent became due; on the                      day of                      18                      , both had been in arrear for twenty-one days, and both are still due.
5. On the same                      day of                      18                      , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to reinstate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims
- (1) possession of the said house and premises;
- (2)                      rupees for arrears of rent;
- (3)                      rupees compensation for the defendant's breach of his covenant to repair;
- (4)                      rupees for the occupation of the house and premises from the                      day of                      18                      , to the day of recovering possession.

## No. 95.

## BY THE TENANT.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That one *E. F.* is the absolute owner of [a piece of land in the town of Calcutta bounded as follows:                      ], the estimated value of which is rupees                      .
2. That on the                      day of                      18                      , the said *E. F.* let the said premises to the plaintiff for                      years, from                      .
3. That the defendant withholds the possession thereof from the plaintiff.

[Demand of judgment.]

## No. 96.

## FOR MOVABLE PROPERTY WRONGFULLY TAKEN.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , plaintiff owned [or was possessed of] one hundred barrels of flour, the estimated value of which is                      rupees.
2. That on that day, at                      , the defendant took the same.
- The plaintiff prays judgment:
- (1) for the possession of the said goods, or for                      rupees in case such possession cannot be had;
- (2) for                      rupees compensation for the detention thereof.

## No. 97.

## FOR MOVABLES WRONGFULLY DETAINED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the                      day of                      18                      , plaintiff owned [or, state facts showing a right to the possession] the goods mentioned in the schedule hereto annexed [or describe the goods], the estimated value of which is                      rupees.
2. That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.
3. That before the commencement of this suit, to wit, on the                      day of                      18                      , the plaintiff demanded the same from the defendant, but he refused to deliver them.
- The plaintiff prays judgment:
- (1) for the possession of the said goods, or for                      rupees, in case such possession cannot be had;
- (2) for                      rupees compensation for the detention thereof.

The schedule.



## THE FOURTH SCHEDULE—continued.

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant [C. D.], for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent and worth       rupees over all his liabilities].
  2. That the plaintiff was thereby induced to sell and deliver to the said C. D. [one hundred boxes of tea], the estimated value of which is       rupees.
  3. That the said representations were false, and were then known by the said C. D. to be so. [Or, That at the time of making the said representations, the said C. D. was insolvent, and knew himself to be so.]
  4. That the said C. D. afterwards transferred the said goods to the defendant E. F. without consideration or who had notice of the falsity of the representation.]
- The plaintiff prays judgment:
- (1) for the possession of the said goods, or for       rupees, in case such possession cannot be had;
  - (2) for       rupees compensation for the detention thereof.

## E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at       , contained [ten bighás].
  2. That the plaintiff was thereby induced to purchase the same at the price of       rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.
  3. That on the       day of       18       , the plaintiff paid the defendant       rupees as part of such purchase-money.
  4. That the said piece of ground contained in fact only [five bighás].
- The plaintiff prays judgment:
- (1) for       rupees, with interest from the       day of       18       ;
  - (2) that the said agreement of purchase be delivered up and cancelled.

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is the absolute owner of [describe the property].
  2. That the defendant is in possession of the same under a lease from the plaintiff.
  3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.
- The plaintiff prays judgment, that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[Pecuniary compensation might also be prayed.]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No.       street, Calcutta].
  2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].
  3. That on the       day of       18       , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].
  4. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same].
- The plaintiff prays judgment, that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

As in Form No. 81.

The plaintiff prays judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

## THE FOURTH SCHEDULE—continued.

No. 103.

FOR RESTORATION OF MOVEABLE PROPERTY, THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather, which was executed by an eminent painter], and of which no duplicate exists [or, state any facts showing that the property is of a kind that cannot be replaced by money].
2. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, he deposited the same for safe keeping with the defendant.
3. That on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.
4. That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.
5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting]:

The plaintiff prays judgment:

- (1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];
- (2) that he return the same to the plaintiff.

No. 104.

INTERPLEADER.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That before the date of the claims hereinafter mentioned, one G. H. deposited with the plaintiff [describe the property] for [safe keeping].
2. That the defendant, C. D., claims the same [under an alleged assignment thereof to him from the said G. H.].
3. That the defendant, E. F., also claims the same [under an order of the said G. H. transferring the same to him].
4. That the plaintiff is ignorant of the respective rights of the defendants.
5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.
6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment:

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;
- (2) that they be required to interplead together concerning their claims to the said property;
- (3) that some person be authorized to receive the said property pending such litigation;]
- (4) that upon delivering the same to such [person], the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 105.

ADMINISTRATION BY CREDITOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. E. F., late of \_\_\_\_\_, was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of \_\_\_\_\_ [here insert nature of debt and security, if any].
2. The said E. F. made his will, dated the \_\_\_\_\_ day of \_\_\_\_\_, and thereof appointed C. D. executor [or, devised his estate in trust, &c., or, died intestate, as the case may be].
3. The said will was proved by the said C. D. [or, Letters of administration were granted, &c.]
4. The defendant has possessed himself of the moveable [and immovable, or, the proceeds of the immovable] property of the said E. F., and has not paid the plaintiff his said debt.
5. The said E. F. died on or about the \_\_\_\_\_ day of \_\_\_\_\_.
6. The plaintiff prays that an account may be taken of the moveable [and immovable] property of the said E. F., deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(Title.)

[Alter Form No. 105 thus:—]

[Omit paragraph 1 and commence paragraph 2] E. F., late of \_\_\_\_\_, duly made his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, and thereof appointed C. D. executor; and by such will bequeathed to the plaintiff [here state the specific legacy.]

For paragraph 4 substitute—

The defendant is in possession of the moveable property of the said E. F., and, amongst other things, of the said [here name the subject of the specific bequest.]

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest] or that, &c.

## THE FOURTH SCHEDULE—continued.

No. 107.

ADMINISTRATION BY PROBINARY LEGATEE.

(Title.)

[Alter Form No. 105 thus :—]

Omit paragraph 1 and substitute for paragraph 2] E. F., late of \_\_\_\_\_, duly made his last will, dated the \_\_\_\_\_ day of \_\_\_\_\_, and thereof appointed C. D. executor, and by such will bequeathed to the plaintiff a legacy of \_\_\_\_\_ rupees.  
In paragraph 4, substitute "legacy" for "debt."

Another Form.

Between E. F. ... Plaintiff.  
and  
G. H. ... Defendant.

E. F., the above-named plaintiff, states as follows :—

1. A. B. of K in the \_\_\_\_\_ duly made his last will, dated the [first day of March, 1873], whereby he appointed the defendant and M. N. [who died in the testator's life-time] executors thereof, and bequeathed his property, whether moveable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July, 1878], and his will was proved by the defendant on the [fourth day of October, 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immovable property; the defendant entered into the receipt of the rents of the immovable property and got in the moveable property; he has sold some part of the immovable property.

The plaintiff claims—

- (1) to have the moveable and immovable property of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken;
- (2) such further or other relief as the nature of the case may require.

Between E. F. ... Plaintiff.  
and  
G. H. ... Defendant.

## Written Statement of Defendant.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold, and which produced the nett sum of rupees \_\_\_\_\_, and the testator had some moveable property which the defendant got in, and which produced the nett sum of \_\_\_\_\_ rupees.

2. The defendant applied the whole of the said sums and the sum of rupees \_\_\_\_\_ which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January, 1875], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT OF

, AT

Civil Suit, No. \_\_\_\_\_.

A. B. of \_\_\_\_\_

against

C. D. of \_\_\_\_\_

of the beneficiaries]

... Plaintiff,

the beneficiary [or, one ... Defendant.

A. B., the above-named plaintiff, states as follows :—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the \_\_\_\_\_ day of \_\_\_\_\_ made upon the marriage of E. F. and G. H., the father and mother of the defendant [or, an instrument of assignment of the estate and effects of E. F. for the benefit of C. D., the defendant, and other the creditors of E. F.]

2. The said A. B. has taken upon himself the burden of the said trust, and is in possession of [or, of the proceeds of] the moveable and immovable property conveyed [or assigned] by the before-mentioned deed.

3. The said C. D. claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, or of part of the said, immovable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable, property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said C. D., the defendant, and all other persons who may be interested in such administration, in the presence of the said C. D. and such other persons so interested as the Court may direct, or that the said C. D. may show good cause to the contrary.

[N. B.—Where the suit is by a beneficiary, the plaint may be modelled, mutatis mutandis, on the plaint by a legatee.]

No. 109.

FORECLOSURE OR SALE.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. By a mortgage-deed dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him

## THE FOURTH SCHEDULE—continued.

the plaintiff, his heirs [or executors, administrators,] and assigns, for securing the principal sum of Rs. together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (a) that the Court will order the defendant to pay him the said sum of Rs. with such further interest as may accrue between the filing of the plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed and the plaintiff placed in possession of the same premises; or (b) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs; and (c) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (d) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

## REDEMPTION.

(Title).

[Alter Form No. 109 thus:—]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, substitute—

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs. which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3, substitute—

The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any), as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

## SPECIFIC PERFORMANCE. (No. 1).

(Title).

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the above-named defendant, C. D., he the said C. D. contracted to buy of [or sell to] him certain immovable property therein described and referred to, for the sum of rupees.

2. He has applied to the said C. D. specifically to perform the said agreement on his part, but he has not done so.

3. The said A. B. has been and still is ready and willing specifically to perform the agreement on his part of which the said C. D. has had notice.

4. The plaintiff prays that the Court will order the said C. D. specifically to perform the said agreement and to do all acts necessary to put the said A. B. in full possession of the said property [or to accept a conveyance and possession of the said property] and to pay the costs of the suit.

[N.B.—In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.]

No. 112.

## SPECIFIC PERFORMANCE. (No. 2.)

(Title).

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18, the defendant was absolutely entitled to certain immovable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the day of 18, the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18, the plaintiff again demanded such conveyance. [Or, That the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment:

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [following the terms of the agreement];

(2) for rupees compensation for withholding the same.

No. 113.

## PARTNERSHIP.

(Title).

A. B., the above-named plaintiff, states as follows:—

1. He and the said C. D., the defendant, have been for the space of years [or months] last past carrying on business together at within the jurisdiction of this Court, under con-



## THE FOURTH SCHEDULE—continued.

Money payable under award.	The plaintiff's claim is	rs. for money payable under an award.
Life policy.	The plaintiff's claim is	rs. upon a policy of insurance upon the life of X. Y., deceased.
Money bond.	The plaintiff's claim is	rs. upon a bond to secure payment of
Foreign judgment.	The plaintiff's claim is	rs. upon a judgment of the Court in [the Empire of Russia].
Bill of exchange, &c.	The plaintiff's claim is	rs. upon a cheque drawn by the defendant.
	The plaintiff's claim is	rs. upon a bill of exchange accepted [or drawn, or indorsed] by the defendant.
	The plaintiff's claim is	rs. upon a promissory note made [or indorsed] by the defendant.
	The plaintiff's claim is	rs. against the defendant, A. B., as acceptor, and against the defendant, C. D., as drawer [or indorser] of a bill of exchange.
Supply.	The plaintiff's claim is	rs. against the defendant as surety for the price of goods sold.
	The plaintiff's claim is	rs. against the defendant, A. B., as principal, and against the defendant, C. D., as surety, for the price of goods sold [or for arrears of rent, or for money lent, or for money received by the defendant, A. B., as traveller for the plaintiff, or, &c.]
	The plaintiff's claim is	rs. for calls upon shares.
	<i>Indorsement for Costs, &amp;c.</i>	
	[Add to the above forms] and	
	his pleader within days [or if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order] from the service hereof, further proceedings will be stayed.	
	<i>Damages and other Claims.</i>	
Agent, &c.	The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.	
	The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller	
	[and rs. for arrears of wages].	
	The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.	
	The plaintiff's claim is for damages for breach of duty as factor [or, &c.,] of the plaintiff [and	rs.
	for money received as factor, or, &c.]	
Apprentices.	The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant [or plaintiff].	
	The plaintiff's claim is for damages for non-compliance with the award of X. Y.	
Arbitration.	The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].	
Assault, &c.	The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, C. D.	
By husband and wife.		
Against husband and wife.	The plaintiff's claim is for damages for assault by the defendant, C. D.	
Pleader.	The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff.	
Bailment.	The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].	
Pledge.	The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].	
Hire.	The plaintiff's claim is for damages for negligence in the custody of furniture [or, a carriage] lent on hire, [and for wrongfully, &c.]	
Banker.	The plaintiff's claim is for damages for wrongfully neglecting [or refusing] to pay the plaintiff's cheque.	
Bill.	The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.	
Board.	The plaintiff's claim is upon a bond conditioned not to carry on the trade of a	
Carrier.	The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.	
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.	
	The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.	
Charter-party.	The plaintiff's claim is for damages for breach of charter-party of ship [Mary].	
Claim for return of goods; damages.	The plaintiff's claim is for return of household furniture, [or, &c.,] or their value, and for damages for detaining the same.	
Damages for depriving of goods.	The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.	
Defamation.	The plaintiff's claim is for damages for libel.	
	The plaintiff's claim is for damages for slander.	
Wrongful distress.	The plaintiff's claim is for damages for improperly distraining.	
	[This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular.]	
Ejectment.	The plaintiff's claim is to recover possession of a house, No. in the Street, or of a farm called Blackacre, situate in the in the of	
	The plaintiff's claim is to establish his title to [here describe property] and to recover the rents thereof.	
To establish title and recover rents.	[The two previous Forms may be combined.]	
Fishery.	The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.	
Fraud.	The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [or a business] or shares, or, &c.]	
	The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.	
Guarantee.	The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.	
	The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.	
Insurance.	The plaintiff's claim is for a loss under a policy upon the ship [Royal Charter], and freight of cargo [or for return of premiums].	
	[This Form shall be sufficient whether the loss claimed be total or partial.]	
Fire-insurance.	The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.	
	The plaintiff's claim is for damages for breach of a contract to insure a house.	
Landlord and tenant.	The plaintiff's claim is for damages for breach of a contract to keep a house in repair.	



## THE FOURTH SCHEDULE—continued.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.	Landlord and tenant.
The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.	Medical man.
The plaintiff's claim is for damages for injury by the defendant's dog.	Mischlerous animal.
The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.	Negligence.
The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.	
The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.	
The plaintiff's claim is as executor of A. B., deceased, for damages for the death of the said A. B., from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.	Art XIII of 1883.
The plaintiff's claim is for damages for breach of promise of marriage.	Promise of marriage.
The plaintiff's claim is for damages for breach of contract to accept and pay for goods.	Sale of goods.
The plaintiff's claim is for damages for non-delivery [or short delivery, or defective quality, or other breach of contract of sale] of cotton [or, &c.].	
The plaintiff's claim is for damages for breach of warranty of a horse.	
The plaintiff's claim is for damages for breach of a contract to sell [or purchase] land.	Sale of land.
The plaintiff's claim is for damages for breach of a contract to let [or take] a house.	
The plaintiff's claim is for damages for breach of a contract to sell [or purchase] the lease, with good-will, fixtures, and stock-in-trade of a public-house.	
The plaintiff's claim is for damages for breach of covenant for title [or for quiet enjoyment, or, &c.] in a conveyance of land.	
The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [or cutting his grass, or felling his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel from thence, or carrying away stones from his river].	Trespass on land.
The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [or house, or mine].	Support.
The plaintiff's claim is for damages for wrongfully obstructing a way [public highway, or private way].	Way.
The plaintiff's claim is for damages for wrongfully diverting [or obstructing, or polluting, or diverting water from] a water-course.	Water-course, &c.
The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [or into the plaintiff's mine].	
The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.	
The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.	Pasture.
[This Form shall be sufficient whatever the nature of the right to pasture be.]	
The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.	Light.
The plaintiff's claim is for damages for the infringement of the plaintiff's patent.	Patent.
The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.	Copyright.
The plaintiff's claim is for damages for wrongfully using [or imitating] the plaintiff's trademark.	Trademark.
The plaintiff's claim is for damages for breach of a contract to build a ship, or to repair a house, &c.	Work.
The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.	
The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [or, &c.].	Nuisance.
The plaintiff's claim is for damages from nuisance by noise from the defendant's works [or stables, or, &c.].	
[Add to indorsement]:—and for an injunction	Injunction.
[Add to indorsement where claim is to land, or to establish title, or both]:—	
and for means profits.	Means profits.
and for an account of rents or arrears of rent.	Arrears of rent.
and for breach of covenant for [repairs].	Breach of covenant.

## 1. Creditor to administer Estate.

The plaintiff's claim is as a creditor of X. Y., of \_\_\_\_\_, deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant, C. D., is sued as the administrator of the said X. Y. [and the defendants, E. F. and G. H., as his co-heirs at law].

## 2. Legatee to administer Estate.

The plaintiff's claim is as a legatee under the will dated the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, of X. Y., deceased, to have the moveable and immoveable property of the said X. Y. administered. The defendant, C. D., is sued as the executor of the said X. Y. [and the defendants E. F. and G. H., as his devisees].

## 3. Partnership.

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the \_\_\_\_\_ day of \_\_\_\_\_], and to have the affairs of the partnership wound up.

## 4. By Mortgagee.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the \_\_\_\_\_ day of \_\_\_\_\_, made between [parties] [or, by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

## 5. By Mortgagee.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [parties], and to redeem the property comprised therein.

## 6. Raising Portions.

The plaintiff's claim is that the sum of \_\_\_\_\_ rs. which by a deed of settlement, dated \_\_\_\_\_ was provided for the portions of the younger children of \_\_\_\_\_ may be raised.

## 7. Execution of Trusts.

The plaintiff's claim is to have the trusts of an indenture dated \_\_\_\_\_ and made between [parties] carried into execution.

## THE FOURTH SCHEDULE—continued

## 8. Cancellation or Rectification.

The plaintiff's claim is to have a deed dated \_\_\_\_\_ and made between [parties] set aside or rectified.

## 9. Specific Performance.

The plaintiff's claim is for specific performance of an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at \_\_\_\_\_

## No. 115.

## PROBATE.

## 1. By an executor or legatee propounding a will in solemn form.

The plaintiff claims to be executor of the last will dated the \_\_\_\_\_ day of \_\_\_\_\_ of C. D., late of \_\_\_\_\_ deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_, and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [or, as the case may be].

## 2. By an executor or legatee of a former will, or a next-of-kin, &amp;c., of the deceased, seeking to obtain the revocation of a probate granted in common form.

The plaintiff claims to be executor of the last will dated the \_\_\_\_\_ day of \_\_\_\_\_ of C. D., late of \_\_\_\_\_ deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_, and to have the probate of a pretended will of the said deceased, dated the \_\_\_\_\_ day of \_\_\_\_\_, revoked. This summons is issued against you as the executor of the said pretended will [or, as the case may be].

## 3. By an executor or legatee of a will when letters of administration have been granted as in an intestacy.

The plaintiff claims to be executor of the last will of C. D., late of \_\_\_\_\_, deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_.

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

## 4. By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.

The plaintiff claims to be the brother and sole next-of-kin of C. D., of \_\_\_\_\_, deceased, who died on the \_\_\_\_\_ day of \_\_\_\_\_, intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [or, as the case may be].



## THE FOURTH SCHEDULE—continued.

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on

day of 18, at o'clock in the forenoon, to answer the above-named plaintiff; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your pleader

which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this 18 day of 18

L. S.

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of

No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(Title.)

To

dwelling at

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS

has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on

day of 18, at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader

which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this 18 day of 18

L. S.

Judge.

NOTE.—If written statements are required, say—You are [or such a party is, as the case may be] required to put in a written statement by the day of

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. of Suit.

IN THE COURT OF

AT

Plaintiff.  
Defendant.

To

(Name, description and address.)

WHEREAS [here enter the name, description and address of the plaintiff] has instituted a suit in this Court against you [here state the particulars of the claim as in the register]; you are hereby summoned to appear in this Court in person on the day of at in the forenoon [If not specially required to appear in person, state—] in person or by a pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able

## THE FOURTH SCHEDULE—continued.

to answer all such questions"] to answer the above-named plaintiff. *If the summons be for the final disposal of the suit, this further direction shall be added here:* "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) *[here mention any document the production of which may be required by the plaintiff]*, which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this                      day of                      18                      .

L. S.

Judge.

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.  
Section 85 of the Code of Civil Procedure.

IN THE COURT OF                      AT                      of 18                      .  
Civil Suit, No.                      .

A. B. of

against

C. D. of

day of                      18                      .

WHEREAS it is stated in the plaint that                      , the defendant in the above suit  
is at present residing in                      , but that the right to sue accrued  
within the jurisdiction of this Court: it is ordered that a summons returnable on the  
day of                      18                      be forwarded for service on the said defendant, to the Court of  
with a duplicate of this proceeding.

L. S.

Judge.

No. 121.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.  
Section 85 of the Code of Civil Procedure.

IN THE COURT OF                      AT                      of 18                      .  
Civil Suit, No.                      .

The                      day of                      18                      .

A. B. of

against

C. D. of

Read proceeding from the

for service on

forwarding

in

civil                      No.                      of that Court.

and

Read bailiff's endorsement on the back of the process stating that the  
proof of the above having been duly taken by me on the [oath or] affirmation of  
and                      it is ordered that the                      be returned to the  
with a copy of this proceeding.

L. S.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(Title.)

I, the undersigned defendant [or one of the defendants], disclaim all interest under the will of the said E. F. in the plaint, named [or, as heir-at-law, or, as next-of-kin, or one of the next-of-kin, of E. F., deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [or deny] [here repeat in the language of the plaint the statements admitted or denied].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [or, that it appears upon the said plaint that I am jointly liable with one E. F., who is not a party to the suit, and not severally liable as by the plaint appears, or, that it appears by the said plaint that G. H. should have been a joint-plaintiff with the said A. B. in the said suit, or, as the case may be].

## THE FOURTH SCHEDULE—continued.

Or, that the plaintiff has conveyed his interest in the said mortgage [or right to redeem] to one *I. J.* [or, that I have conveyed or assigned to *H. L.* by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [or, as the case may be].

(Signed) *C. D.*  
Defendant.

No. 123.

## INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT  
Civil Suit, No. of 18  
*A. B.*  
against  
*C. D., E. F. and G. H.*

Interrogatories on behalf of the above-named *A. B.* [or *C. D.*] for the examination of the above-named [*E. F.* and *G. H.*, or *A. B.*]

1. Did not, &c.
2. Has not, &c.

The defendant *E. F.* is required to answer the interrogatories numbered  
The defendant *G. H.* is required to answer the interrogatories numbered

No. 124.

## FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT  
Civil Suit, No. of 18  
*A. B.*  
against  
*C. D.*

Take notice that the plaintiff [or defendant] requires you to produce for his inspection the following documents referred to in your plaint [or written statement, or affidavit], dated the day of 18

Describe documents required.

*X. Y.*, Pleader for the plaintiff [or the defendant].

To *Z.*  
Pleader for the defendant [or plaintiff].

No. 125.

## SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(Title.)

To WHEREAS your attendance is required to in the above cause, you are hereby required [personally on behalf of the day of 18, at the hour of A.M. to appear before this Court] on the day of 18, at the hour of A.M. [and] to bring with you or to send to this Court a sum of Rs. , being your travelling and other expenses and subsistence-allowance for one day, is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

Notice—(1). If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2). If you are to be detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 126.

Another Form.

No. of Suit.

IN THE COURT OF

AT

Plaintiff.

Defendant.

To

[Name, description and address.]

at

You are hereby summoned to appear in this Court in person on the day of in the forenoon, to give evidence on behalf of the plaintiff [or the defendant] in the



## THE FOURTH SCHEDULE—continued.

above-mentioned suit, and to produce [here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly], and you are not to depart thence until you have been examined [or have produced the document] and the Court has risen, or unless you have obtained the leave of the Court.

## FORMS OF DECREES.

No. 127.

## SIMPLE MONEY-DECREE.

(Title.)

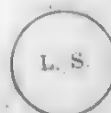
Claim for  
THIS cause coming on  
presence of  
defendant, it is ordered that the  
sum of Rs.  
from

for final disposal before  
, on the part of the plaintiff, and  
do pay to  
the  
per cent. per  
to the date of realization of the said sum, and do also pay to the  
the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate  
aforesaid from the date of taxation to the date of realization.

Costs of suit.

PLAINTIFF.			DEFENDANT.		
	Rs.	A. P.		Rs.	A. P.
1. Stamp for plaint	...	...	Stamp for power	...	...
2. Do. for power	...	...	Do. petition	...	...
3. Do. exhibits	...	...	Pleader's fee	...	...
4. Pleader's fees on Rs.	...	...	Subsistence for witnesses	...	...
5. Translation-fee	...	...	Service of process	...	...
6. Subsistence for witness for attendance	...	...	Translation fee	...	...
7. Commissioner's fee	...	...	Commissioner's fee	...	...
8. Service of process	...	...			
9. &c.	...	...			
TOTAL	...	...	TOTAL	...	...

GIVEN under my hand and the seal of the Court, this      day of      18      .



Judge.

No. 128.

## DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

(Title.)

It is ordered that it be referred to the Registrar [or Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the mortgage [or lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [or Taxing Officer] do declare in court on the day of      what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in court the amount so due; it is ordered that the plaintiff do reconvey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such reconveyance being made, and documents being delivered up, the Registrar [or Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into court such principal, interest and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [or the premises subject to the said lien] be sold with the approbation of the Registrar [or Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

## FINAL DECREE FOR FORECLOSURE.

(Title.)

WHEREAS it appears to the Court that the defendant has not paid into court the sum      which was on the      day of      last declared in court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in

## THE FOURTH SCHEDULE—continued.

this suit on the \_\_\_\_\_ day of \_\_\_\_\_ last, and that the period of six months has elapsed since the said \_\_\_\_\_ day of \_\_\_\_\_  
 It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

## PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

*In creditor's suit—*

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

*In suits by legatees—*

2. An account be taken of the legacies given by the testator's will.

*In suits by next-of-kin—*

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [ or one of the next-of-kin ] of the intestate.

[After the first paragraph, the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the \_\_\_\_\_ day of \_\_\_\_\_ next, pay into court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the Registrar shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into court.

8. And that Mr. E. F. be Receiver in the suit [or proceeding], and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar (and shall give security by bond for the due performance of his duties to the amount of \_\_\_\_\_ rupees).

9. And it is further ordered, that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say:—

(a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof;

(c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered, that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered, that for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered, that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the \_\_\_\_\_ day of \_\_\_\_\_ and that the Registrar do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the \_\_\_\_\_ day of \_\_\_\_\_

14. And, lastly, it is ordered, that this suit [or matter] stand adjourned for making final decree to the \_\_\_\_\_ day of \_\_\_\_\_

[Such part only of this order is to be used as is applicable to the particular case.]

No. 131.

## FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

Section 213 of the Code of Civil Procedure.

1. It is ordered that the defendant \_\_\_\_\_ do on or before the \_\_\_\_\_ day of \_\_\_\_\_ pay into court the sum of Rs. \_\_\_\_\_, the balance by the said certificate found to be due from the said defendant on account of the estate of \_\_\_\_\_, the testator, and also the sum of Rs. \_\_\_\_\_ for interest, at the rate of \_\_\_\_\_ per centum per annum, from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_ amounting together to the sum of Rs. \_\_\_\_\_

2. Let the Registrar [or Taxing officer] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. \_\_\_\_\_ ordered to be paid into court as aforesaid, as follows:—

(a).—The costs of the plaintiff to Mr. \_\_\_\_\_, his attorney [or pleader], and the costs of the defendant to Mr. \_\_\_\_\_, his attorney [or pleader].

## THE FOURTH SCHEDULE—continued.

(b).—And (if any debts are due) with the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid; and after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;
2. And it is ordered, that an account be taken of what is due for principal and interest on the said legacy;
3. And it is also ordered, that the defendant do within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;
4. And it is ordered, that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

## FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.
2. And it is ordered, that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—
  - (a).—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, A. B., and C., his wife, in her right, as the sister and one of the next-of-kin of the said E. F., the intestate.
  - (b).—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said E. F., the intestate.
  - (c).—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next-of-kin of the said E. F., the intestate.

## No. 132.

## ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(Title.)

It is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, &c.

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property and effects now belonging to the said partnership;
  2. An account of the debts and liabilities of the said partnership;
  3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.
- And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all the other acts required to be done be completed before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

## No. 133.

## PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.

IN THE COURT OF

AT

Civil Suit, No.

A. B. of  
against  
C. D. of

It is ordered that the fund now in court, amounting to the sum of Rs. be applied as follows:—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs.

## THE FOURTH SCHEDULE—continued.

2. In payment of the costs of all parties in this suit, amounting to Rs.  
[These costs must be ascertained before the decree is drawn up].  
3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. being the residue of the said sum of Rs. now in court, to the defendant as his share of the partnership-assets.  
[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff [or defendant] in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]  
And that the defendant [or plaintiff] do on or before the day of being the balance of the said sum of Rs. pay to the plaintiff [or defendant] the sum of Rs. due to him, which will then remain due.

No. 134.

## CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF  
Civil Suit, No.AT  
of 18  
A. B. of  
against  
C. D. of

CERTIFIED that no [or partial, as the case may be, and if partial, state to what extent] satisfaction of the decree of this Court, in Civil Suit No. of 18, a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.  
GIVEN under my hand and the seal of the Court, this day of 18.

L. S.

Judge.

No. 135.

## NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF  
Civil Suit, No.  
Miscellaneous, No.AT  
of 18  
of 18  
A. B. of  
against  
C. D. of

To  
WHEREAS  
has made application to this Court for execution of decree in Civil Suit No. 18, this is to give you notice that you are to appear before this Court on the day of 18, either in person, or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.  
GIVEN under my hand and the seal of the Court, this day of 18.

L. S.

Judge.

No. 136.

## WARRANT OF ATTACHMENT OF MOVABLE PROPERTY IN DEFENDANT'S POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(Title.)

TO THE BAILIFF OF THE COURT.

WHEREAS  
day of 18, in Suit No. was ordered, by decree of this Court, passed on the of 18, to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid

DECREE.			
Principal			
Interest			
Costs			
Costs of decree			
Interest thereon			
Total of attachment			
Total			

THESE ARE TO COMMAND YOU to attach the moveable property of the said as set forth in the list hereunto annexed, or which shall be pointed out to you by the said and unless the said shall pay to you the said sum of Rs. together with Rs. the costs of this attachment, to hold the same until further orders from this Court.  
YOU ARE FURTHER COMMANDED to return this Warrant on or before the day of

## THE FOURTH SCHEDULE—continued.

18 , with an endorsement certifying the date and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this                      day of                      18 .  
Schedule.

L. S.

Judge.

No. 137.

## WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &amp;c.

Section 263 of the Code of Civil Procedure.

(Title.)

To THE BAILIFF OF THE COURT.

WHEREAS                      in the occupancy of                      the plaintiff in this suit: you are hereby directed to put the said  
has been decreed to                      in possession of the same, and you are hereby authorized to remove any person who may refuse  
to vacate the same.

GIVEN under my hand and the seal of the Court, this                      day of                      18

L. S.

Judge.

No. 138.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(Title.)

To

WHEREAS                      on the                      day of                      18  
has failed to satisfy a decree passed against                      in favour of                      for Rs.                      : it is ordered that the defendant  
be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from                      the following property in the possession of the said                      that is to say,                      to which the defendant is  
entitled, subject to any claim of the said                      , and the said                      is hereby  
prohibited and restrained, until the further order of this Court, from delivering the said property to any person  
or persons whomsoever.

GIVEN under my hand and the seal of the Court, this                      day of                      18

L. S.

Judge.

No. 139.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(Title.)

To

WHEREAS                      on the                      day of                      18  
has failed to satisfy a decree passed against                      in Civil Suit, No.                      of 18                      in favour of                      for Rs.                      : it is ordered that the defendant be, and  
hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain  
debt alleged now to be due from you to the said defendant, namely,

and that you, the said                      be, and you are hereby, prohibited and restrained, until the  
further order of this Court, from making payment of the said debt, or any part thereof, to any person  
whomsoever.

GIVEN under my hand and the seal of the Court, this                      day of                      18

L. S.

Judge.

## THE FOURTH SCHEDULE—continued.

No. 140.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &amp;c.

Section 268 of the Code of Civil Procedure.

(Title.)

To

Defendant, and to  
Company.

, Manager of

has failed

WHEREAS

to satisfy a decree passed against  
on the day of 18

, in Civil Suit, No. of 18

in favour of for Rs.

it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order  
of this Court, from making any transfer of shares in  
the aforesaid Company, namely,

or from receiving payment of any dividends thereof; and you

, the Manager of the said Company, are hereby prohibited and restrained from permitting any such  
transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this

day of

18

L. S.

Judge.

No. 141.

## ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(Title.)

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the  
day of 18 , in Civil Suit, No.

of 18 , in favour of

for Rs.

you, the said

, be, and you are hereby, prohibited and restrained,  
until the further order of this Court, from alienating the property specified in the schedule hereunto annexed,  
by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the  
same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this

day of

18

Schedule.

L. S.

Judge.

No. 142.

## ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF  
A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF

Civil Suit, No.

AT of 18

A. B. of

against

C. D. of

To

SIR,

THE plaintiff having applied, under section of the Code of Civil Procedure, for an attachment  
of certain money now in your hands (here state how the money is supposed to be in the hands of the person  
addressed, on what account, &c.), I request that you will hold the said money subject to the further order of  
this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

L. S.

Judge.

Dated the

day of

18

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## THE FOURTH SCHEDULE—continued.

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &amp;c., OF MONEY, &amp;c., IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF

AT  
Civil Suit, No. of 18  
Miscellaneous, No. of 18  
A. B. of  
against  
C. D. of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil Suit, No. of 18, passed on the day of 18, in favour of for Rs. it is ordered that the property so attached, consisting of Rs. in money, and Rs. in Currency notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said to, and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the Bailiff of the Court, by public auction in the manner prescribed for sale in execution of decrees, and that the money which may be realized by such sale, or a sufficient part thereof to satisfy the said decree, shall be paid over to the said and the remainder if any, shall be paid to you, the said

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF

AT  
Civil Suit, No. of 18  
Miscellaneous, No. of 18  
A. B. of  
against  
C. D. of

To

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Civil Suit, No. of 18, this is to give you notice to appear before this Court on the day of 18, either in person or by a pleader of the Court duly instructed, to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 287 of the Code of Civil Procedure.

IN THE COURT OF

AT  
Civil Suit, No. of 18  
Miscellaneous, No. of 18  
A. B. of  
against  
C. D. of

TO THE BAILIFF OF THE COURT.

THERE ARE TO COMMAND YOU to sell by auction, after giving notice, by affixing the same in this court-house, and after making due proclamation,\* the days' previous property attached under a warrant from this Court dated the day of 18, in execution of a decree in favour of in suit No. of 18, or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18, with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

\* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified.

## THE FOURTH SCHEDULE—continued.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION.  
Section 300 of the Code of Civil Procedure.IN THE COURT OF AT of 18  
Civil Suit, No. A. B. of  
against  
C. D. of

WHEREAS To has been the  
purchaser at a sale by auction in execution of the decree in the above suit of  
now in your possession, you are hereby prohibited from delivering possession of the said  
to any person except the said

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 147.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE  
PURCHASER.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT of 18  
Civil Suit, No. A. B. of  
against  
C. D. of

To and to has become  
WHEREAS the purchaser at a public sale in execution of the decree in the above suit of  
certain debt due from you to you  
, that is to say , it is ordered that you be,  
and you are hereby, prohibited from receiving, and you from making payment of, the said debt  
to any person or persons except the said

GIVEN under my hand and the seal of the Court, this day of

L. S.

Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT of 18  
Civil Suit, No. A. B. of  
against  
C. D. of

To Manager of Company.  
and WHEREAS has become the purchaser at a public sale in execution of the decree,  
in the above suit of certain shares in the above Company, that is to say, of  
standing in the name of you be, and you are hereby,  
it is ordered that you  
prohibited from making any transfer of the said shares to any person except the said  
the purchaser aforesaid, or from receiving any dividends thereon; and you  
Manager of the said Company, from permitting any such transfer or making any such  
payment to any person except the said the  
purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.